

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 953
93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Offered April 5, 2006.

Senate Substitute adopted, April 5, 2006.

Taken up for Perfection April 5, 2006. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4184S.11P

AN ACT

To repeal sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018, 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041, 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088, 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151, 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, and 381.241, RSMo, and section 381.410 as enacted by conference committee substitute for senate bill no. 664, eighty-eighth general assembly, second regular session, and section 381.412 as enacted by house committee substitute for senate bill no. 148, eighty-ninth general assembly, first regular session, and sections 381.410 and 381.412 as enacted by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, and to enact in lieu thereof forty-three new sections relating to the regulation of title insurance, with penalty provisions and an effective date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041,
3 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062,
4 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088,
5 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111,
6 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151,
7 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, and
8 381.241, RSMo, and section 381.410 as enacted by conference committee
9 substitute for senate bill no. 664, eighty-eighth general assembly, second regular
10 session, and section 381.412 as enacted by house committee substitute for senate
11 bill no. 148, eighty-ninth general assembly, first regular session, and sections
12 381.410 and 381.412 as enacted by conference committee substitute for house
13 substitute for house committee substitute for senate committee substitute for
14 senate bill no. 894, ninetieth general assembly, second regular session, are
15 repealed and forty-three new sections enacted in lieu thereof, to be known as
16 sections 374.046, 374.047, 374.048, 374.049, 374.055, 381.003, 381.005, 381.008,
17 381.009, 381.015, 381.018, 381.019, 381.022, 381.023, 381.024, 381.025, 381.026,
18 381.028, 381.029, 381.032, 381.033, 381.034, 381.038, 381.042, 381.045, 381.048,
19 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.072, 381.075, 381.076,
20 381.085, 381.112, 381.113, 381.115, 381.118, 381.122, 381.410, and 381.412, to
21 read as follows:

374.046. 1. [(1) The director may issue cease and desist orders whenever
2 it appears to him upon competent and substantial evidence that any person is
3 acting in violation of any law of this state or any rule or regulation promulgated
4 by the director relating to the business of insurance. Before any cease and desist
5 order shall be issued, a copy of the proposed order together with an order to show
6 cause why such cease and desist order should not be issued shall be served either
7 personally or by certified mail on any person named therein.

8 (2) (a) Upon issuing any order to show cause the director shall notify the
9 person named therein that the person is entitled to a public hearing before the
10 director if a request for a hearing is made in writing to the director within fifteen
11 days from the day of the service of the order to show cause why the cease and
12 desist order should not be issued.

13 (b) The cease and desist order shall be issued fifteen days after the service
14 of the order to show cause if no request for a public hearing is made as above
15 provided.

16 (c) Upon receipt of a request for a hearing the director shall set a time

17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 (d) At the hearing the person may be represented by counsel and shall be
22 entitled to be advised of the nature and source of any adverse evidence procured
23 by the director and shall be given the opportunity to submit any relevant written
24 or oral evidence in his behalf to show cause why the cease and desist order should
25 not be issued.

26 (e) At the hearing the director shall have such powers as are conferred
27 upon him in section 374.190.

28 (f) At the conclusion of the hearing, or within ten days thereafter, the
29 director shall issue the cease and desist order as proposed or as subsequently
30 modified or notify the person that no order shall be issued.

31 (g) The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any person against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist
35 order is upheld, the order shall become final.

36 **2.] If the director determines based upon substantial and**
37 **competent evidence that a person has engaged, is engaging, or is about**
38 **to engage in an act, practice, omission, or course of business**
39 **constituting a violation of the laws of this state relating to insurance**
40 **in this chapter, except sections 374.700 to 374.789, chapter 354, RSMo,**
41 **and chapters 375 to 385, RSMo, or a rule adopted or order issued**
42 **pursuant thereto or that a person has materially aided, is materially**
43 **aiding, or is about to materially aid an act, practice, omission, or**
44 **course of business constituting a violation of the laws of this state**
45 **relating to insurance in this chapter, except sections 374.700 to 374.789,**
46 **chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or**
47 **order issued pursuant thereto, the director may order the following**
48 **relief:**

49 **(1) An order directing the person to cease and desist from**
50 **engaging in the act, practice, omission, or course of business;**

51 **(2) A curative order or order directing the person to take other**
52 **action necessary or appropriate to comply with the insurance laws of**

53 this state;

54 (3) Order a civil penalty or forfeiture as provided in section
55 374.049; and

56 (4) Award reasonable costs of the investigation.

57 2. In determining any relief sought, the director shall consider,
58 among other factors, whether:

59 (1) The violations are likely to continue or reoccur;

60 (2) Actual financial loss was sustained by consumers and
61 restitution has been made;

62 (3) The act, practice, omission, or course of business was
63 detected as part of a self-audit or internal compliance program and
64 immediately reported to the director; and

65 (4) The act, practice, omission, or course of business had
66 previously been detected, but inadequate policies and procedures were
67 implemented to prevent reoccurrence.

68 3. Unless the director determines that a summary order is
69 appropriate under subsection 4 of this section, the director shall
70 provide notice of the intent to initiate administrative enforcement by
71 serving a statement of the reasons for the action upon any person
72 subject to the proceedings. A statement of reasons, together with an
73 order to show cause why a cease-and-desist order and other relief
74 should not be issued, shall be served either personally or by certified
75 mail on any person named therein. The director shall schedule a time
76 and place at least ten days thereafter, for hearing, and after notice of
77 and opportunity for hearing to each person subject to the order, the
78 director may issue a final order under subsection 6 of this section.

79 4. If the director determines that sections 375.014, 375.144, or
80 375.310, RSMo, are being violated and consumers are being aggrieved
81 by the violations, the order issued under subdivision (1) of subsection
82 1 of this section may be summary and be effective on the date of
83 issuance. Upon issuance of the order, the director shall promptly serve
84 each person subject to the order with a copy of the order and a notice
85 that the order has been entered.

86 5. A summary order issued under subsection 4 of this section
87 must include a statement of the reasons for the order, notice within
88 five days after receipt of a request in a record from the person that the
89 matter will be scheduled for a hearing, and a statement whether the

90 department is seeking a civil penalty or costs of the investigation. If
91 a person subject to the order does not request a hearing and none is
92 ordered by the director within thirty days after the date of service of
93 the order, the order becomes final as to that person by operation of
94 law. If a hearing is requested or ordered, the director, after notice of
95 and opportunity for hearing to each person subject to the order, may
96 modify or vacate the order or extend it until final determination.

97 6. If a hearing is requested or ordered pursuant to subsection 3
98 or subsection 5 of this section, a hearing before the director or a
99 hearing officer designated by the director must be provided. A final
100 order may not be issued unless the director makes findings of fact and
101 conclusions of law in a record in accordance with the provisions of
102 chapter 536, RSMo, and procedural rules promulgated by the
103 director. The final order may make final, vacate, or modify the order
104 issued under subsection 5 of this section.

105 7. In a final order under subsection 6 of this section, the director
106 may impose a civil penalty or forfeiture as provided in section 374.049.
107 No civil penalty or forfeiture may be imposed against a person unless
108 the person has engaged in the act, practice, omission, or course of
109 business constituting the violation.

110 8. In a final order under subsection 6 of this section, the director
111 may charge the actual cost of an investigation or proceeding for a
112 violation of the insurance laws of this state or a rule adopted or order
113 issued pursuant thereto. These funds shall be paid to the director to
114 the credit of the insurance dedicated fund.

115 9. The director is authorized to issue subpoenas, compel
116 attendance of witnesses, administer oaths, hear testimony of witnesses,
117 receive evidence, and require the production of books, papers, records,
118 correspondence, and all other written instruments or documents
119 relevant to the proceeding and authorized in contested cases under the
120 provisions of chapter 536, RSMo, and procedural rules promulgated by
121 the director.

122 10. Statements of charges, notices, orders, and other processes
123 of the director may be served by anyone duly authorized by the
124 director either in the manner provided by law for service of process in
125 civil actions, or by registering or certifying and mailing a copy thereof
126 to the person affected by such statement, notice, order, or other process

127 at his or its residence or principal office or place of business. The
128 verified return by the person so serving such statement, notice, order,
129 or other process setting forth the manner of such service shall be proof
130 of the same, and the return postcard receipt for such statement, notice,
131 order, or other process, registered and mailed as aforesaid, shall be
132 proof of the service of the same.

133 11. If a petition for judicial review of a final order is not filed in
134 accordance with section 374.055, the director may file a certified copy
135 of the final order with the clerk of a court of competent
136 jurisdiction. The order so filed has the same effect as a judgment of the
137 court and may be recorded, enforced, or satisfied in the same manner
138 as a judgment of the court.

139 12. If a person violates or does not comply with an order under
140 this section, the director may under section 374.048 petition a court of
141 competent jurisdiction to enforce the order. The court may not require
142 the director to post a bond in an action or proceeding under this
143 section. If the court finds, after service and opportunity for hearing,
144 that the person was not in compliance with the order, the court may,
145 in addition to relief authorized in section 374.048, adjudge the person
146 in civil contempt of the order. A violation of or failure to comply with
147 an order under this section is a level three violation under section
148 374.049. The court may impose a further civil penalty against the
149 person for contempt in an amount not less than five thousand dollars
150 but not greater than one hundred thousand dollars for each violation
151 and may grant any other relief the court determines is just and proper
152 in the circumstances.

153 13. Until the expiration of the time allowed under section 374.055
154 for filing a petition for judicial review, if no such petition has been
155 duly filed within such time or if a petition for review has been filed
156 within such time, then until the transcript of the record in the
157 proceeding has been filed in the circuit court of Cole County, the
158 director may at any time, upon such notice and in such manner as he
159 shall deem proper, modify or set aside in whole or in part any order
160 issued by him under this section.

161 14. The enforcement authority of the director under this section
162 is cumulative to any other statutory authority of the director.

163 15. The director is authorized to issue administrative consent

164 orders in the public interest as complete or partial settlement of any
165 investigation, examination, or other proceeding, which curative orders
166 may contain any provision necessary or appropriate to assure
167 compliance with the insurance laws of this state, require payment of
168 restitution to be distributed directly or by the director to any
169 aggrieved consumers, civil penalties, or voluntary forfeiture,
170 reimbursement for costs of investigation or examination, or any other
171 relief deemed by the director to be necessary and appropriate. Any
172 remaining matters not addressed in settlement may be submitted to the
173 director through a contested proceeding under this section.

174 16. (1) Any person willfully violating any provision of any cease and
175 desist order of the director after it becomes final, while the same is in force, upon
176 conviction thereof shall be punished by a fine of not more than one **hundred**
177 thousand dollars [or one year in jail], **by imprisonment of up to ten years,**
178 or by both such fine and [jail sentence] **imprisonment.**

179 (2) In addition to any other penalty provided, violation of any cease and
180 desist order shall subject the violator to suspension or revocation of any
181 certificate of authority or license as may be applicable under the laws of this state
182 relating to the business of insurance.

183 [3. (1) When it appears to the director that there is a violation of the laws
184 of this state or any rule or regulation promulgated by the director relating to the
185 business of insurance, and that the continuance of the acts or actions of any
186 person as herein defined would produce injury to the insuring public or to any
187 other person in this state, or when it appears that a person is doing or
188 threatening to do some act in violation of the laws of this state relating to
189 insurance, the director may file a petition for injunction in the circuit court of
190 Cole County, Missouri, in which he may ask for a temporary injunction or
191 restraining order as well as a permanent injunction to restrain the act or
192 threatened act. In the event the temporary injunction or restraining order or a
193 permanent injunction is issued by the circuit court of Cole County, Missouri, no
194 person against whom the temporary injunction or restraining order or permanent
195 injunction is granted shall do or continue to do any of the acts or actions
196 complained of in the petition for injunction, unless and until the temporary
197 injunction or restraining order or permanent injunction is vacated, dismissed or
198 otherwise terminated.

199 (2) Any writ of injunction issued under this law may be served and

200 enforced as provided by law in injunctions issued in other cases, but the director
201 of the insurance department shall not be required to give any bond as preliminary
202 to or in the course of any proceedings to which he is a party as director under this
203 section, either for costs or for any injunction, or in case of appeal to either the
204 supreme court or to any appellate court.

205 4.] 17. The term "person" as used in this [section] **chapter** shall include
206 any individual, partnership, corporation, association or trust, or any other legal
207 entity.

208 18. The term "order" as used in this chapter shall include a
209 formal administrative direction or command of the director issued
210 under this section or in any contested case subject to the provisions of
211 section 536.063, RSMo, or any lawful administrative proceeding subject
212 to judicial review, but shall not include department bulletins, no-action
213 letters, advisory opinions, or any other statement of general
214 applicability that should be adopted by rule.

 374.047. 1. If the director determines, based on substantial and
2 competent evidence, that a corporation or insurer with a certificate of
3 authority under the laws relating to insurance willfully has engaged in
4 an act, practice, omission, or course of business constituting a level
5 three, four, or five violation of the laws of this state relating to
6 insurance in this chapter, except sections 374.700 to 374.789, chapter
7 354 and chapters 375 to 385, RSMo, or been convicted of any felony or
8 misdemeanor under any state or federal law, the director may, after
9 hearing, issue an order suspending or revoking the certificate of
10 authority.

11 2. Prior to issuance of the order under this section, the director
12 shall give at least thirty days' notice with a statement of reasons for the
13 action and afford such corporation or insurer the opportunity for a
14 hearing upon written request. If such corporation or insurer requests
15 a hearing in writing, a final order of suspension or revocation may not
16 be issued unless the director makes findings of fact and conclusions of
17 law in a record in accordance with the contested case provisions of
18 chapter 536, RSMo, and procedural rules promulgated by the director.

19 3. The enforcement authority of the director under this section
20 is cumulative to any other statutory authority of the director.

 374.048. 1. If the director believes that a person has engaged, is
2 engaging, or is about to engage in an act, practice, omission, or course

3 of business constituting a violation of the laws of this state relating to
4 insurance in this chapter, except sections 374.700 to 374.789, chapter
5 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued
6 pursuant thereto or that a person has, is, or is about to engage in an
7 act, practice, omission, or course of business that materially aids a
8 violation of the laws of this state relating to insurance in this chapter,
9 except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385,
10 RSMo, or a rule adopted or order issued pursuant thereto, the director
11 may maintain an action in the circuit court of any county of the state
12 or any city not within a county to enjoin the act, practice, omission, or
13 course of business and to enforce compliance with the laws of this state
14 relating to insurance or a rule adopted or order issued by the director.

15 2. In an action under this section and on a proper showing, the
16 court may:

17 (1) Issue a permanent or temporary injunction, restraining
18 order, or declaratory judgment;

19 (2) Order other appropriate or ancillary relief, which may
20 include:

21 (a) An asset freeze, accounting, writ of attachment, writ of
22 general or specific execution, and appointment of a receiver or
23 conservator, which may be the director, for the defendant or the
24 defendant's assets;

25 (b) Ordering the director to take charge and control of a
26 defendant's property, including accounts in a depository institution,
27 rents, and profits; to collect debts; and to acquire and dispose of
28 property;

29 (c) Imposing a civil penalty or forfeiture as provided in section
30 374.049;

31 (d) Upon showing financial loss, injury, or harm to identifiable
32 consumers, imposing an order of restitution or disgorgement directed
33 to a person who has engaged in an act, practice, omission, or course of
34 business in violation of the laws or rules relating to insurance;

35 (e) Ordering the payment of prejudgment and post-judgment
36 interest;

37 (f) Ordering reasonable costs of investigation and prosecution;
38 and

39 (g) Ordering the payment to the insurance dedicated fund an

40 additional amount equal to ten percent of the total restitution or
41 disgorgement ordered, or such other amount as awarded by the court,
42 which shall be appropriated to an insurance consumer education
43 program administered by the director; or

44 (3) Order such other relief as the court considers necessary or
45 appropriate.

46 3. The director may not be required to post a bond in an action
47 or proceeding under this section.

48 4. The case may be brought in the circuit court of Cole County,
49 any county or city not within a county in which a violation has
50 occurred, or any county or city not within a county, which has venue
51 of an action against the person, partnership, or corporation under
52 other provisions of law.

53 5. The enforcement authority of the director under this section
54 is cumulative to any other authority of the director to impose orders
55 under other provisions of the insurance laws of this state.

56 6. If the director determines it to be in the public interest, the
57 director is authorized to enter into a consent injunction and judgment
58 in the settlement of any proceeding under the laws of this state relating
59 to insurance in this chapter, except sections 374.700 to 374.789, chapter
60 354 and chapters 375 to 385, RSMo.

61 7. A "Consumer Restitution Fund" shall be created for the
62 purpose of preserving and distributing to aggrieved consumers
63 disgorgement or restitution funds obtained through enforcement
64 proceedings brought by the director. In addition to the equitable
65 powers of the court authorized above, the court may order that such
66 funds be paid into the consumer restitution fund for distribution to
67 aggrieved consumers. It shall be the duty of the director to distribute
68 such funds to those persons injured by the unlawful acts, practices,
69 omissions, or courses of business by the subject of the
70 proceeding. Notwithstanding the provisions of section 33.080, RSMo,
71 any funds remaining in the director's consumer restitution fund at the
72 end of any biennium shall not be transferred to the general revenue
73 fund, but if the director is unable with reasonable efforts to ascertain
74 the aggrieved consumers, then the funds may be transferred to the
75 insurance dedicated fund to be used for consumer education.

374.049. 1. Violations of the laws of this state relating to

insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, are classified for the purpose of civil penalties and forfeitures into the following five classifications:

- (1) Level one violations;
- (2) Level two violations;
- (3) Level three violations;
- (4) Level four violations; and
- (5) Level five violations.

2. An order to impose a civil penalty or forfeiture, when imposed by the director in an administrative proceeding under section 374.046 on a person for any violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

- (1) No civil penalty or forfeiture for a level one violation;
- (2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;
- (3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of one hundred thousand dollars per annum for multiple violations;
- (4) Ten thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations;
- (5) Fifty thousand dollars per each level five violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations.

3. An order to impose a civil penalty or forfeiture, when imposed by the court in an enforcement proceeding under section 374.048 on a person for any violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

- (1) No civil penalty or forfeiture for a level one violation;

39 (2) One thousand dollars per each level two violation, up to an
40 aggregate civil penalty or forfeiture of fifty thousand dollars per
41 annum for multiple violations;

42 (3) Five thousand dollars per each level three violation, up to an
43 aggregate civil penalty or forfeiture of two hundred thousand dollars
44 per annum for multiple violations;

45 (4) Twenty thousand dollars per each level four violation, up to
46 an aggregate civil penalty or forfeiture of one million dollars per
47 annum for multiple violations;

48 (5) One million dollars per each level five violation, with no limit
49 to civil penalties or forfeitures for multiple violations;

50 4. No civil penalty or forfeiture may be imposed against a person,
51 unless the person has engaged in the act, practice, omission or course
52 of business constituting the violation.

53 5. Any violation of the laws of this state relating to insurance in
54 this chapter, except sections 374.700 to 374.789, chapter 354 and
55 chapters 375 to 385, RSMo, which is not classified or does not authorize
56 a specific range for a civil penalty or forfeiture for violations, shall be
57 classified as a level one violation. In bringing an action to enforce a
58 rule adopted by the director, unless the conduct that violates the rule
59 also violates the enabling statute, the violation shall be classified as a
60 level one violation and shall not be subject to any provision in this
61 section regarding the enhancement of a civil penalty or forfeiture.

62 6. The civil penalties or forfeitures set forth in this section
63 establish a maximum range. The court, or the director in
64 administrative enforcement, shall consider all of the circumstances,
65 including the nature of violations to determine whether, and to any
66 extent, a civil penalty or forfeiture is justified.

67 7. In any enforcement proceeding, the court, or director in
68 administrative enforcement, may enhance the civil penalty or forfeiture
69 with a one classification step increase under this section, if the
70 violation was knowing. The court, or director in administrative
71 enforcement, may enhance the civil penalty or forfeiture with a two
72 level increase if the violation was knowingly committed in conscious
73 disregard of the law.

74 8. In any enforcement proceeding, the court or director in
75 administrative enforcement may, after consideration of the factors

76 specified in subsection 2 of section 374.046, enhance the civil penalty
77 or forfeiture with a one classification step increase under this section,
78 if the violations resulted in actual financial loss to consumers.

79 9. In any enforcement proceeding, the court, or director in
80 administrative enforcement, shall reduce the civil penalty or forfeiture
81 on that person with up to a two classification step reduction under this
82 section, if prior to receiving notice of the violation from the
83 department, the person detects the violation through a self-audit or
84 internal compliance program reasonably designed to detect and
85 prevent insurance law violations and immediately reports the violation
86 to the director.

87 10. If more than one error is caused by a single act or omission
88 in the use of data processing equipment and such errors are not known
89 by the violator at the time the error occurs, then any such errors shall
90 be regarded as a single violation under this section.

91 11. Any civil penalty or forfeiture recovered by the director shall
92 be paid to the treasurer and then distributed to the public schools as
93 required by Article IX, section 7 of the Missouri Constitution.

94 12. The penalties and forfeitures authorized by this section
95 govern all actions and proceedings that are instituted on the basis of
96 conduct occurring after August 28, 2006.

374.055. 1. Except as otherwise provided, any interested person
2 aggrieved by any order of the director under the laws of this state
3 relating to insurance in this chapter, except sections 374.700 to 374.789,
4 chapter 354 and chapters 375 to 385, RSMo, or a rule adopted by the
5 director, or by any refusal or failure of the director to make an order
6 pursuant to any of said provisions, shall be entitled to a hearing before
7 the director in accordance with the provisions of chapter 536, RSMo. A
8 final order issued by the director is subject to judicial review in
9 accordance with the provisions of chapter 536, RSMo. However, any
10 findings of fact or conclusions of law in any order regarding the actual
11 costs of the investigation or proceedings under section 374.046, or the
12 classification of any violation under section 374.049, shall be subject to
13 de novo review.

14 2. A rule adopted by the director is subject to judicial review in
15 accordance with the provisions of chapter 536, RSMo.

381.003. 1. Sections 381.003 to 381.412 shall be known and may

2 be cited as the "Missouri Title Insurance Act".

3 2. Except as otherwise expressly provided in this chapter and
4 except where the context otherwise requires, all provisions of the laws
5 of this state relating to insurance and insurance companies generally
6 shall apply to title insurance, title insurers, and title agents.

381.005. As used in sections 381.003 to 381.412, the term
2 "premium" shall mean risk rates charged to the insured. Beginning July
3 1, 2007, the term "premium" shall mean the consideration paid by or on
4 behalf of the insured for the issuance of a title insurance policy, closing
5 protection, or any endorsement or special coverage, consistent with the
6 reporting requirements for gross risk rate premiums in the accounting
7 practices and procedures manual adopted by the National Association
8 of Insurance Commissioners. Premium would also contemplate an
9 amount retained by agents, abstractors or attorneys, overhead and
10 miscellaneous expenses, expected losses and loss adjustment expense
11 from underwriting the risk and profit margin, but does not include the
12 cost of abstract or title search or examination fees, settlement, or
13 escrow services, noninsurance-related information services, or any
14 other items or services not specified in this chapter.

381.008. The director shall study the impact of sections 381.032
2 and 381.033 on the title insurance market, propose rules to implement
3 these sections, and report his or her findings to the general assembly
4 by January 1, 2007.

381.009. As used in this chapter, the following terms mean:

2 (1) "Abstract of title" or "abstract", a written history, synopsis, or
3 summary of the recorded instruments affecting the title to real
4 property;

5 (2) "Affiliate", a specific person that directly, or indirectly
6 through one or more intermediaries, controls, or is controlled by, or is
7 under common control with, the person specified;

8 (3) "Affiliated business", any portion of a title insurance agency's
9 business written in this state that was referred to it by a producer of
10 title insurance business or by an associate of the producer, where the
11 producer or associate, or both, have a financial interest in the title
12 agency;

13 (4) "Associate", any:

14 (a) Business organized for profit in which a producer of title

15 business is a director, officer, partner, employee, or an owner of a
16 financial interest;

17 (b) Employee of a producer of title business;

18 (c) Franchisor or franchisee of a producer of title business;

19 (d) Spouse, parent, or child of a producer of title insurance
20 business who is a natural person;

21 (e) Person, other than a natural person, that controls, is
22 controlled by, or is under common control with, a producer of title
23 business;

24 (f) Person with whom a producer of title insurance business or
25 any associate of the producer has an agreement, arrangement, or
26 understanding, or pursues a course of conduct, the purpose or effect of
27 which is to provide financial benefits to that producer or associate for
28 the referral of business;

29 (5) "Control", including the terms "controlling", "controlled by",
30 and "under common control with", the possession, direct or indirect, of
31 the power to direct or cause the direction of the management and
32 policies of a person, whether through the ownership of voting
33 securities, by contract other than a commercial contract for goods or
34 nonmanagement services, or otherwise, unless the power is the result
35 of an official position or corporate office held by the person. Control
36 shall be presumed to exist if a person, directly or indirectly, owns,
37 controls, holds with the power to vote, or holds proxies representing
38 ten percent or more of the voting securities of another person. This
39 presumption may be rebutted by showing that control does not exist in
40 fact. The director may determine, after furnishing all persons in
41 interest notice and opportunity to be heard and making specific
42 findings of fact to support the determination, that control exists in fact,
43 notwithstanding the absence of a presumption to that effect;

44 (6) "County" or "counties" includes any city not within a county;

45 (7) "Direct operations", that portion of a title insurer's operations
46 which are attributable to business written by a bona fide employee;

47 (8) "Director", the director of the department of insurance, or the
48 director's representatives;

49 (9) "Escrow", written instruments, money or other items
50 deposited by one party with a depository, escrow agent, or escrowee for
51 delivery to another party upon the performance of a specified condition

52 or the happening of a certain event;

53 (10) "Escrow, settlement or closing fee", the consideration for
54 supervising or handling the actual execution, delivery, or recording of
55 transfer and lien documents and for disbursing funds;

56 (11) "Financial interest", a direct or indirect legal or beneficial
57 interest, where the holder is or will be entitled to five percent or more
58 of the net profits or net worth of the entity in which the interest is
59 held;

60 (12) "Foreign title insurer", any title insurer incorporated or
61 organized under the laws of any other state of the United States, the
62 District of Columbia, or any other jurisdiction of the United States;

63 (13) "Geographically indexed or retrievable", a system of keeping
64 recorded documents which includes as a component a method for
65 discovery of the documents by:

66 (a) Searching an index arranged according to the description of
67 the affected land; or

68 (b) An electronic search by description of the affected land;

69 (14) "Marketable title", when an original title to land has
70 emanated from the government, and all persons who appear in the
71 chain of title to have had any interest in the record title during the last
72 forty-five years have conveyed to the last record owner or persons
73 through whom he or she derives title, and it is established by affidavits
74 or other instruments recorded and included in the chain or title that
75 he or she and persons through whom he or she derives title have been
76 in continuous, open, exclusive, and peaceable possession of the land for
77 the last twenty-seven years;

78 (15) "Net retained liability", the total liability retained by a title
79 insurer for a single risk, after taking into account any ceded liability
80 and collateral, acceptable to the director, and maintained by the
81 insurer;

82 (16) "Non-United States title insurer", any title insurer
83 incorporated or organized under the laws of any foreign nation or any
84 province or territory;

85 (17) "Producer", any person, including any officer, director, or
86 owner of five percent or more of the equity or capital of any person,
87 engaged in this state in the trade, business, occupation, or profession
88 of:

- 89 (a) **Buying or selling interests in real property;**
90 (b) **Making loans secured by interests in real property; or**
91 (c) **Acting as broker, agent, representative, or attorney of a**
92 **person who buys or sells any interest in real property or who lends or**
93 **borrowes money with the interest as security;**
- 94 (18) **"Qualified depository institution", an institution that is:**
95 (a) **Organized or, in the case of a United States branch or agency**
96 **office of a foreign banking organization, licensed under the laws of the**
97 **United States or any state and has been granted authority to operate**
98 **with fiduciary powers;**
99 (b) **Regulated, supervised, and examined by federal or state**
100 **authorities having regulatory authority over banks and trust**
101 **companies;**
102 (c) **Insured by the appropriate federal entity; and**
103 (d) **Qualified under any additional rules established by the**
104 **director;**
- 105 (19) **"Referral", the directing or the exercising of any power or**
106 **influence over the direction of title insurance business, whether or not**
107 **the consent or approval of any other person is sought or obtained with**
108 **respect to the referral;**
- 109 (20) **"Search", "search of the public records", or "search of title",**
110 **a search of those records established by the laws of this state for the**
111 **purpose of imparting constructive notice of matters relating to real**
112 **property to purchasers for value and without knowledge;**
- 113 (21) **"Security" or "security deposit", funds or other property**
114 **received by the title insurer as collateral to secure an indemnitor's**
115 **obligation under an indemnity agreement under which the insurer is**
116 **granted a perfected security interest in the collateral in exchange for**
117 **agreeing to provide coverage in a title insurance policy for a specific**
118 **title exception to coverage;**
- 119 (22) **"Subsidiary", an affiliate controlled by a person directly or**
120 **indirectly through one or more intermediaries;**
- 121 (23) **"Title agency", an authorized person who issues title**
122 **insurance on behalf of a title insurer. An attorney licensed to practice**
123 **law in this state who issues title insurance as a part of his or her law**
124 **practice, but does not maintain or operate a title insurance business**
125 **separate from such law practice is not a title agency;**

126 (24) "Title agent" or "agent", an attorney licensed to practice law
127 in this state who issues title insurance as part of his or her law
128 practice, but who is not affiliated with or acting on behalf of a title
129 agency, or an authorized person who performs one or more of the
130 following acts in conjunction with the issuance of a title insurance
131 commitment or policy:

132 (a) Determines insurability;

133 (b) Performs searches;

134 (c) Handles escrows, settlements, or closings; or

135 (d) Solicits or negotiates title insurance business;

136 (25) "Title insurance business" or "business of title insurance":

137 (a) Issuing as insurer or offering to issue as insurer a title
138 insurance policy;

139 (b) Transacting or proposing to transact by a title insurer any of
140 the following activities when conducted or performed in contemplation
141 of and in conjunction with the issuance of a title insurance policy:

142 a. Soliciting or negotiating the issuance of a title insurance
143 policy;

144 b. Guaranteeing, warranting, or otherwise insuring the
145 correctness of title searches for all instruments affecting titles to real
146 property, any interest in real property, cooperative units, and
147 proprietary leases and for all liens or charges affecting the same;

148 c. Handling of escrows, settlements, or closings;

149 d. Executing title insurance policies;

150 e. Effecting contracts of reinsurance; or

151 f. Abstracting, searching, or examining titles;

152 (c) Guaranteeing, warranting, or insuring searches or
153 examinations of title to real property or any interest in real property;

154 (d) Guaranteeing or warranting the status of title as to
155 ownership of or liens on real property by any person other than the
156 principals to the transaction;

157 (e) Promising to purchase or repurchase for consideration an
158 indebtedness because of a title defect, whether or not involving a
159 transfer of risk to a third person; or

160 (f) Promising to indemnify the holder of a mortgage or deed of
161 trust against loss from the failure of the borrower to pay the mortgage
162 or deed of trust when due if the property fails to yield sufficient

163 proceeds upon foreclosure to satisfy the debt, when one or both of the
164 following conditions exist:

165 a. The security has been impaired by the discovery of a
166 previously unknown property interest in favor of one who is not liable
167 for the payment of the mortgage or deed of trust; or

168 b. Perfection of the position of the mortgage or deed of trust
169 which was assured to exist cannot be obtained, notwithstanding timely
170 recordation with the recorder of deeds of the county in which the
171 property is located; or

172 (g) Doing or proposing to do any business substantially
173 equivalent to any of the activities listed in this subdivision in a manner
174 designed to evade the provisions of this chapter;

175 (26) "Title insurance commitment" or "commitment", a
176 preliminary report, commitment, or binder issued prior to the issuance
177 of a title insurance policy containing the terms, conditions, exceptions,
178 and other matters incorporated by reference under which the title
179 insurer is willing to issue its title insurance policy. A title insurance
180 commitment is not an abstract of title;

181 (27) "Title insurance policy" or "policy", a contract insuring or
182 indemnifying owners of, or other persons lawfully interested in, real
183 property or any interest in real property, against loss or damage
184 arising from any or all of the following conditions existing on or before
185 the policy date and not excepted or excluded:

186 (a) Title to the estate or interest in land being otherwise than as
187 stated in the policy;

188 (b) Defects in or liens or encumbrances on the insured title;

189 (c) Unmarketability of the insured title;

190 (d) Lack of legal right of access to the land;

191 (e) Invalidity or unenforceability of the lien of an insured
192 mortgage;

193 (f) The priority of a lien or encumbrance over the lien of any
194 insured mortgage;

195 (g) The lack of priority of the lien of an insured mortgage over
196 a statutory lien for services, labor, or material;

197 (h) The invalidity or unenforceability of an assignment of the
198 insured mortgage; or

199 (i) Rights or claims relating to the use of or title to the land;

200 (28) "Title insurer" or "insurer", a company organized under the
201 laws of this state for the purpose of transacting the business of title
202 insurance and any foreign or non-United States title insurer licensed
203 in this state to transact the business of title insurance;

204 (29) "Title plant", a set of records encompassing at least the most
205 recent forty-five years, consisting of documents, maps, surveys, or
206 entries affecting title to real property or any interest in or
207 encumbrance on the property, which have been filed or recorded in the
208 jurisdiction for which the title plant is established or maintained. The
209 records in the title plant shall be geographically indexed or retrievable
210 as to those records containing a legal description of affected land, and
211 otherwise by name of affected person;

212 (30) "Underwrite", the authority to accept or reject risk on behalf
213 of the title insurer.

 381.015. 1. When a title insurance commitment issued by a title
2 insurer, title agency, or title agent includes an offer to issue an owner's
3 policy covering the resale of owner-occupied residential property, the
4 commitment shall incorporate the following statement in bold type:

5 "Please read the exceptions and the terms shown or referred to
6 herein carefully. The exceptions are meant to provide you with notice
7 of matters which are not covered under the terms of the title insurance
8 policy and should be carefully considered."

9 2. A title insurer, title agency, or title agent issuing a lender's
10 title insurance policy in conjunction with a mortgage loan made
11 simultaneously with the purchase of all or part of the real estate
12 securing the loan, where no owner's title insurance policy has been
13 requested, shall give written notice, on a form prescribed or approved
14 by the director, to the purchaser-mortgagor at the time the commitment
15 is prepared. The notice shall explain that a lender's title insurance
16 policy is to be issued protecting the mortgage-lender, and that the
17 policy does not provide title insurance protection to the
18 purchaser-mortgagor as the owner of the property being
19 purchased. The notice shall explain what a title policy insures against
20 and what possible exposures exist for the purchaser-mortgagor that
21 could be insured against through the purchase of an owner's
22 policy. The notice shall also explain that the purchaser-mortgagor may
23 obtain an owner's title insurance policy protecting the property owner

24 at a specified cost or approximate cost, if the proposed coverages are
25 or amount of insurance is not then known. A copy of the notice, signed
26 by the purchaser-mortgagor, shall be retained in the relevant
27 underwriting file at least fifteen years after the effective date of the
28 policy.

29 3. A violation of any provision under this section is a level one
30 violation under section 374.049, RSMo.

381.018. 1. The title insurer shall not allow the issuance of its
2 commitments or policies by a title agency or title agent not affiliated
3 with a title agency unless there is in force a written contract between
4 the parties which sets forth the responsibilities of each party or, where
5 both parties share responsibility for particular functions, specifies the
6 division of responsibilities.

7 2. The title insurer shall maintain an inventory of all policy
8 numbers allocated to each title agency or title agent not affiliated with
9 a title agency.

10 3. The title insurer shall have on file proof that the title agency
11 or title agent is licensed by this state.

12 4. The title insurer shall establish the underwriting guidelines
13 and, where applicable, limitations on title claims settlement authority
14 to be incorporated into contracts with its title agencies and title agents
15 not affiliated with a title agency.

16 5. If a title insurer terminates its agency with a title agency
17 licensed under this chapter, the insurer shall, within seven days of the
18 termination, notify the director of the reasons for termination,
19 including any information that is required to be reported under
20 subsection 5 of section 375.022, RSMo.

21 6. A violation of any provision under this section is a level two
22 violation under section 374.049, RSMo.

381.019. 1. A title insurer, title agency or title agent
2 participating in residential closings using the Housing and Urban
3 Development settlement statement (form HUD-1) shall provide clear
4 and conspicuous disclosure of charges. The director may adopt rules
5 not in conflict with provisions of the federal Real Estate Settlement
6 Procedures Act, as amended, under section 381.042 to implement
7 disclosure of the following:

8 (1) Premium as defined in section 381.005;

- 9 (2) Abstract or title search fee;
10 (3) Settlement or closing fees;
11 (4) Policy issuance fees under section 381.113; and
12 (5) Any other associated fees along with a concise description.
13 2. A violation of any provision under this section is a level two
14 violation under section 374.049, RSMo.

381.022. 1. A title insurer, title agency, or title agent not
2 affiliated with a title agency may operate as an escrow, security,
3 settlement, or closing agent, provided that all funds deposited with the
4 title insurer, title agency, or title agent not affiliated with a title
5 agency in connection with any escrow, settlement, closing, or security
6 deposit shall be submitted for collection to or deposited in a separate
7 fiduciary trust account or accounts in a qualified depository institution
8 no later than the close of the next business day after receipt, in
9 accordance with the following requirements:

10 (1) The funds regulated under this section shall be the property
11 of the person or persons entitled to them under the provisions of the
12 escrow, settlement, security deposit, or closing agreement and shall be
13 segregated for each depository by escrow, settlement, security deposit,
14 or closing in the records of the title insurer, title agency, or title agent
15 not affiliated with a title agency, in a manner that permits the funds to
16 be identified on an individual basis and in accordance with the terms
17 of the individual instructions or agreements under which the funds
18 were accepted; and

19 (2) The funds shall be applied only in accordance with the terms
20 of the individual instructions or agreements under which the funds
21 were accepted.

22 2. It is unlawful for any person to:

23 (1) Commingle personal or any other moneys with escrow funds
24 regulated under this section;

25 (2) Use such escrow funds to pay or indemnify against debts of
26 the title insurance agent or of any other person;

27 (3) Use such escrow funds for any purpose other than to fulfill
28 the terms of the individual escrow after the necessary conditions of the
29 escrow have been met;

30 (4) Disburse any funds held in an escrow account unless the
31 disbursement is made under a written instruction or agreement

32 specifying under what conditions and to whom such funds may be
33 disbursed or under an order of a court of competent jurisdiction; or

34 (5) Disburse any funds held in a security deposit account unless
35 the disbursement is made under a written agreement specifying:

36 (a) What actions the indemnitor shall take to satisfy his or her
37 obligation under the agreement;

38 (b) The duties of the title insurer, title agency, or title agent not
39 affiliated with a title agency with respect to disposition of the funds
40 held, including a requirement to maintain evidence of the disposition
41 of the title exception before any balance may be paid over to the
42 depositing party or his or her designee; and

43 (c) Any other provisions the director may require by rule or
44 order.

45 3. Notwithstanding the provisions of subsection 2 of this section,
46 any interest received on funds deposited in connection with any
47 escrow, settlement, security deposit, or closing may be retained by the
48 title insurer, title agency, or title agent not affiliated with a title
49 agency as compensation for administration of the escrow or security
50 deposit, unless the instructions for the funds or a governing statute
51 provides otherwise.

52 4. Notwithstanding the provisions of subsection 1 of this section,
53 a title insurer, title agency, or title agent is not authorized to provide
54 such services as an escrow, security, settlement, or closing agent in a
55 residential real estate transaction unless as part of the same
56 transaction the title insurer, title agency, or title agent issues a
57 commitment, binder, or title insurance policy, the buyer's agent or
58 agency is representing the same title insurer and a closing protection
59 letter has been issued protecting the seller's interest, or the title agent
60 or agency gives written notice to the affected person, on a form
61 prescribed or approved under regulation promulgated by the director,
62 that the person's interest in the closing or settlement is not protected
63 by the title insurer, title agency, or title agent.

64 5. A violation of any provision under this section is a level three
65 violation under section 374.049, RSMo.

381.023. 1. A title insurer shall, at least annually, conduct an
2 onsite review of the underwriting, claims, and escrow practices of the
3 title insurance agency or agent with which it has a contract. If the title

4 insurance agency or agent does not maintain separate fiduciary trust
5 accounts for each title insurer it represents, the title insurer shall
6 verify that the funds held on its behalf are reasonably ascertainable
7 from the books of account and records of the title insurance agency or
8 agent.

9 2. Each title insurer authorized to do business in Missouri shall
10 adopt and utilize the following standards and procedures for the on-site
11 review of title insurance agents and agencies. On-site review
12 documentation, work papers, summaries, and reports shall be
13 maintained by each title insurer for a period of at least four years and
14 shall be made available to the director for examination upon request.
15 A report shall be prepared by the title insurer at the completion of the
16 on-site review setting forth the title insurer's findings. On-site review
17 findings shall include, but not be limited to, the following:

18 (1) A review of contracts between the title insurer and the title
19 insurance agency or agent;

20 (2) A statement of financial condition of the title insurance
21 agency or agent, certified by the title insurance agent or designated
22 agent of the agency under oath or by affirmation as being a true and
23 accurate representation of financial condition;

24 (3) A review of management practices related to conflicts of
25 interest, affiliated business arrangements, and regulatory compliance;

26 (4) Reconciliation of orders with commitments, title searches,
27 title policies, and collection of premiums;

28 (5) A review of the procedures for tracking issued commitments;

29 (6) A review of the practices to cancel commitments on
30 transactions that do not close;

31 (7) A review of the procedures for follow-up after closing to track
32 status of outstanding conditions required for timely issuance of
33 policies;

34 (8) A review of the procedures for voiding policies;

35 (9) A review of the tracking of open escrow, security, settlement
36 or closing files;

37 (10) A review of issued policy reports to the title insurer by the
38 title insurance agency or agent;

39 (11) A review of any files awaiting policy issuance that includes
40 a determination of the average length of time between closing and the

41 issuance of the title policy; and

42 (12) A review of a three-way reconciliation of bank balance, book
43 balance and escrow trial balance for each individual escrow bank
44 account.

45 3. If the agent or agency is an agent or agency for two or more
46 title insurers, the title insurers may cooperate in complying with the
47 requirements of this section.

48 4. The title insurer shall provide a copy of the report of each
49 such review it performs to the director. The director may promulgate
50 rules setting forth the minimum threshold level at which a review
51 would be required, the standards thereof and the form of report
52 required.

53 5. A violation of any provision under this section is a level two
54 violation under section 374.049, RSMo.

381.024. 1. It is unlawful for any title agency or title agent not
2 affiliated with an agency to deny reasonable access or in any manner
3 fail to cooperate with its underwriters in the title insurers' reviews of
4 the agency's or agent's escrow, settlement, closing and security deposit
5 accounts.

6 2. It is unlawful for any title agency or title agent not affiliated
7 with an agency, appointed by two or more title insurers, to deny any of
8 the title insurers reasonable access to the fiduciary trust accounts in
9 connection with providing escrow or closing settlement services, and
10 any or all of the supporting account information in order to ascertain
11 the safety and security of the funds held by the title agency or title
12 agent.

13 3. A violation of any provision under this section is a level two
14 violation under section 374.049, RSMo.

381.025. 1. A title insurer, title agency, title agent, or other
2 person shall not give or receive, directly or indirectly, any
3 consideration for the referral of title insurance business, escrow,
4 closing, or other service provided by a title insurer, title agency, or
5 title agent, except as provided under subsection 2 of this section.

6 2. Notwithstanding the provisions of subsection 1 of this section,
7 a title agency, title agent, or other person may give discounts directly
8 to the real estate purchaser in a real estate closing transaction if the
9 discounts are solely related to charges for settlement or escrow

10 services.

11 3. A violation of any provision under this section is a level three
12 violation under section 374.049, RSMo.

13 4. If the director fails to initiate a proceeding to enforce this
14 section within forty-five days following receipt of written notice of such
15 violation, any title insurer, title agency, or title agent doing business
16 in the same county may maintain an action for injunctive relief against
17 a title insurer, title agency, or title agent violating any provision of this
18 section. In any action under this subsection, the court may award to
19 the successful party the court costs of the action together with
20 reasonable attorney fees.

381.026. 1. The settlement agent shall record all deeds and
2 security instruments for real estate closings handled by it within five
3 business days after completion of all conditions precedent thereto.

4 2. Nothing in this chapter shall be deemed to prohibit the
5 recording of documents prior to the time funds are available for
6 disbursement with respect to a transaction in which a title insurer,
7 title agency, or title agent not affiliated with a title agency is the
8 settlement agent, provided all parties to whom payment will become
9 due upon such recording consent thereto in writing.

381.028. 1. No title insurer, title agency, or title agent shall
2 participate in any transaction in which it knows that an agent or other
3 person requires, directly or indirectly, or through any trustee, director,
4 officer, agent, employee, or affiliate, as a condition, agreement, or
5 understanding to selling or furnishing any other person a loan, or loan
6 extension, credit, sale, property, contract, lease, or service, that the
7 other person shall place a title insurance policy of any kind with the
8 title insurer or through a particular title agency or agent.

9 2. It is unlawful for any title insurer, title agency, title agent, or
10 any employee or representative thereof, to:

11 (1) Pay, allow, or give or offer to pay, allow, or give, directly or
12 indirectly, as an inducement for insurance, or after insurance has been
13 effected, any rebate, discount, abatement, credit or reduction of the
14 premium named in the policy of insurance, or any special favor or
15 advantage in the dividends or other benefits to accrue thereon, or any
16 valuable consideration or inducement relating to premiums whatever,
17 not specified or provided for in the policy, except to the extent

18 provided for in the applicable filing with the director;

19 (2) Pay, allow, or give or offer to pay, allow, or give, directly or
20 indirectly, to any person acting as an agent, representative, attorney,
21 or employee of the owner, lessee, mortgagee, existing, or prospective,
22 of the real property or interest therein which is the subject matter of
23 title insurance or as to which a service is to be performed, any
24 commission or part of its fee or charges, or any other consideration as
25 inducement or compensation for placing any order for a title insurance
26 policy or for performance of any escrow or other service by the insurer,
27 title agency, title agent, or employee, or representative thereof; or

28 (3) Issue any policy or perform any service in connection with
29 which it or any agent has paid or contemplates paying, allowing or
30 giving any commission, rebate, inducement, or other consideration that
31 would violate subdivision (2) of this section.

32 3. A violation of any provision under this section is a level three
33 violation under section 374.049, RSMo.

381.029. 1. Whenever the business to be written constitutes
2 affiliated business, prior to commencing the transaction, the title
3 insurer, title agency, or title agent shall ensure that its customer has
4 been provided with disclosure of the existence of the affiliated business
5 arrangement and a written estimate of the charge or range of charges
6 generally made for the title services provided by the title insurer, title
7 agency, or agent.

8 2. The director may establish rules for use by all title agencies
9 in the recording and reporting of the agency's owners and of the
10 agency's ownership interests in other persons or businesses and of
11 material transactions between the parties.

12 3. The director may require each title insurer, agency, and agent
13 to file on forms prescribed by the director reports setting forth the
14 names and addresses of those persons, if any, that have a financial
15 interest in the insurer, agency, or agent and who the insurer, agency,
16 or agent knows or has reason to believe are producers of title
17 insurance business or associates of producers.

18 4. Nothing in this chapter shall be construed as prohibiting
19 affiliated business arrangements in the provision of title insurance
20 business so long as:

21 (1) The title insurer, title agency, title agent, or party making a

22 referral constituting affiliated business, at or prior to the time of the
23 referral, discloses the arrangement and, in connection with the
24 referral, provides the person being referred with a written estimate of
25 the charge or range of charges likely to be assessed and otherwise
26 complies with the disclosure obligations of this section;

27 (2) The person being referred is not required to use a specified
28 title insurer, agency, or agent; and

29 (3) The only thing of value that is received by the title insurer,
30 agency, agent, or party making the referral, other than payments
31 otherwise permitted, is a return on an ownership interest. For
32 purposes of this subsection, the terms "required use" and "return on an
33 ownership interest" shall have the meaning accorded to them under the
34 Real Estate Settlement Procedures Act (RESPA), as amended.

35 5. A violation of any provision under this section is a level two
36 violation under section 374.049, RSMo.

381.032. 1. Premium rates shall not be excessive, inadequate or
2 unfairly discriminatory. Premium rates are excessive if they are likely
3 to produce a long-run profit that is unreasonably high for the insurance
4 provided or if expenses are unreasonably high in relation to services
5 rendered. Premium rates are inadequate when they are clearly
6 insufficient to sustain projected losses and expenses and the use of
7 such rates, if continued, will tend to create a monopoly in the market.

8 2. Unfair discrimination exists if, after allowing for practical
9 limitations, price differentials fail to reflect equitably the differences
10 in expected losses and expenses. A rate is not unfairly discriminatory
11 because different premiums result for policyholders with like loss
12 exposures but different expenses, or like expenses but different loss
13 exposures, so long as the rate reflects the differences with reasonable
14 accuracy.

15 3. Due consideration shall be given to past and prospective loss
16 and expense experience within and outside of this state, to catastrophe
17 hazards and contingencies, to events or trends within and outside of
18 this state, and to all other relevant factors, including judgment.

19 4. Premium rates may contain a provision for contingencies and
20 an allowance permitting a reasonable profit. In determining the
21 reasonableness of profit, consideration should be given to all
22 investment income attributable to premiums and reserves.

381.033. 1. Every title insurer shall file with the director all
2 premium rates and supplementary rate information which is to be used
3 in this state. Such rates and supplementary rate information and
4 supporting information required by the director shall be filed before
5 the effective date. Upon application by the filer, the director may
6 authorize an earlier effective date.

7 2. Rates filed under this section shall be filed in such form and
8 manner as prescribed by the director. Whenever a filing is not
9 accompanied by such information as the director has required under
10 this section, the director shall so inform the insurer within thirty days.

11 3. It is unlawful for a title insurer, title agency, or title agent to
12 charge a premium for any coverage or protection in a title insurance
13 policy that has not been filed with the director in a manual of
14 classifications, rules, underwriting rules and rates, rating plan, or
15 modification of the foregoing and the forms and policies to which such
16 rates are applied. A violation of this subsection is a level two violation
17 under section 374.049, RSMo.

18 4. All rates, supplementary rate information and any supporting
19 information, not otherwise confidential under section 374.070, RSMo,
20 shall, as soon as filed, be open to public inspection at any reasonable
21 time. Copies may be obtained by any person on request and upon
22 payment of a reasonable charge.

381.034. 1. A rate may be disapproved at any time subsequent to
2 the effective date. The director may disapprove a rate if the director
3 finds that the rate is inadequate, excessive or unfairly discriminatory
4 under section 381.032.

5 2. The insurer whose rates have been disapproved shall be given
6 a hearing upon a written request made within thirty days after the
7 disapproval order.

8 3. Whenever an insurer has no legally effective rates as a result
9 of the director's disapproval of rates or other act, the director shall on
10 request of the insurer specify interim rates for the insurer that are
11 high enough to protect the interests of all parties and may order that
12 a specified portion of the premiums be placed in an escrow account
13 approved by him. When new rates become legally effective, the director
14 shall order the escrowed funds or any overcharge in the interim rates
15 to be distributed appropriately, except that refunds of less than ten

16 dollars per policyholder shall not be required.

381.038. 1. No title insurance policy shall be written unless and
2 until the title insurer, title agent, or agency has:

3 (1) Caused a search of title to be made from the evidence
4 prepared from a title plant of the county where the property is located
5 as herein defined, or if no such title plant of the county exists, or the
6 owner of such plant refuses to furnish the title insurer, title agent, or
7 agency desiring to insure, such title evidence at a reasonable charge
8 and within a reasonable period of time, then such policy of title
9 insurance shall be based upon the best title evidence available. An
10 attorney licensed to practice law in this state may upon personal
11 inspection use the best evidence available in any county and is not
12 subject to the provisions of the title plant requirement of this
13 chapter. The records on which the title plant is based on shall show all
14 prior matters affecting the title to the property or interest therein for
15 a continuous period of time of at least the most recent forty-five years;
16 and

17 (2) Caused to be made a determination of insurability of title in
18 accordance with sound underwriting practices.

19 2. Except when allowed by regulations promulgated by the
20 director, no title insurer, title agent, or agency shall knowingly issue
21 any owner's title insurance policy or commitment to insure without
22 showing all outstanding, enforceable recorded liens or other interests
23 against the title which is to be insured.

24 3. Evidence of the examination of title and determination of
25 insurability generated by a title insurer, title agency, or title agent
26 shall be preserved and maintained by such insurer, agency, or agent for
27 as long as appropriate to the circumstances but in no event less than
28 fifteen years after the title insurance policy has been issued. Instead
29 of retaining the original evidence, the title insurer or title agent or
30 agency may in the regular course of business establish a system
31 whereby all or part of the evidence is recorded, copied, or reproduced
32 by any process that accurately and legibly reproduces or forms a
33 durable medium for reproducing the contents of the original.

34 4. Records relating to escrow and security deposits shall be
35 preserved and retained by a title insurer engaged in direct operations,
36 title agency, and title agent for as long as appropriate to the

37 circumstances but, in no event less than seven years after the escrow
38 or security deposit account has been closed.

39 5. A title agent shall promptly remit premiums to the title
40 insurer. Under ordinary circumstances, this means that the premium
41 is remitted within sixty days of receiving an invoice from the title
42 insurer. A title insurer shall promptly issue each title insurance
43 policy. Under ordinary circumstances, this means that the policy is
44 issued within forty-five days after closing, unless special circumstances
45 as defined by rule delay the issuance.

46 6. This section shall not apply to a title insurer acting as
47 coinsurer if one of the other coinsurers has complied with this section.

48 7. A violation of any provision under this section is a level two
49 violation under section 374.049, RSMo.

381.042. 1. The director under the authority in section 374.045,
2 RSMo, may issue rules, regulations, and orders necessary to carry out
3 the provisions of this chapter.

4 2. Any rule or portion of a rule, as that term is defined in section
5 536.010, RSMo, that is created under the authority delegated in this
6 section shall become effective only if it complies with and is subject to
7 all of the provisions of chapter 536, RSMo, and, if applicable, section
8 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
9 and if any of the powers vested with the general assembly pursuant to
10 chapter 536, RSMo, to review, to delay the effective date, or to
11 disapprove and annul a rule are subsequently held unconstitutional,
12 then the grant of rulemaking authority and any rule proposed or
13 adopted after January 1, 2007, shall be invalid and void.

381.045. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of this chapter or a rule
3 adopted or order issued pursuant thereto, or a person has materially
4 aided, is materially aiding, or is about to materially aid an act,
5 practice, omission, or course of business constituting a violation of this
6 act or a rule adopted or order issued pursuant thereto, the director
7 may issue such administrative orders as authorized under section
8 374.046, RSMo. The director of insurance may also suspend or revoke
9 the license of a producer under section 375.141, RSMo, or the certificate
10 of authority of any title insurer as authorized under section 374.047,
11 RSMo, for any such willful violation.

12 2. If the director believes that a person has engaged, is engaging,
13 or is about to engage in a violation of this chapter or a rule adopted or
14 order issued pursuant thereto, or that a person has materially aided,
15 is materially aiding, or is about to materially aid an act, practice,
16 omission, or course of business constituting a violation of this act or a
17 rule adopted or order issued pursuant thereto, the director may
18 maintain a civil action for relief authorized under section 374.048,
19 RSMo.

20 3. Nothing contained in this section shall affect the right of the
21 director to impose any other penalties provided for in the laws relating
22 to the business of insurance.

23 4. Nothing contained in this chapter is intended to or shall in
24 any other manner limit or restrict the rights of policyholders,
25 claimants, and creditors.

 381.048. 1. The director may bring an action against any title
2 insurer, title agency, title agent, or any director, officer, agent,
3 employee, trustee, or affiliate of a title insurer, title agency, or title
4 agent in a court of competent jurisdiction to enjoin violations of the
5 Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as
6 amended.

7 2. A violation of any provision under the federal Real Estate
8 Settlement Procedures Act, as amended, is a level two violation under
9 section 374.049, RSMo.

 381.052. No person other than a domestic, foreign, or non-United
2 States title insurer organized on the stock plan and duly licensed by
3 the director shall transact title insurance business as an insurer in this
4 state.

 381.055. Subject to the exceptions and restrictions contained in
2 this chapter, a title insurer shall have the power to:

- 3 (1) Do only title insurance business;
- 4 (2) Reinsure title insurance policies; and
- 5 (3) Perform ancillary activities, unless prohibited by the
6 director, including examining titles to property and any interest in
7 property and procuring and furnishing related information and
8 information about relevant real and personal property, when not in
9 contemplation of, or in conjunction with, the issuance of a title
10 insurance policy.

381.058. 1. No insurer that transacts any class, type, or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section, in any residential real estate transaction, a title insurer issuing a commitment, binder, or title insurance policy to be purchased either by or on behalf of a buyer, lender, or seller is required to issue closing or settlement protection to that person's interest. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft or other improper acts or omissions with regard to escrow or settlement funds; and

(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The charge for issuance of the closing or settlement protection letter shall be filed as a rate with the director under section 381.032 as a component of the premium. The entire charge for the closing or settlement protection letter shall be retained by the title insurer.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

4. As used in subsection 3 of this section, the term "closing or settlement protection letter" means a statement issued by a title insurer to a party to a real estate transaction acknowledging that the title agency or agent closing a transaction in connection with which the title insurer's policy is being issued is a duly licensed and authorized agency or agent of the title insurer, that the performance of settlement

38 services by such agency or agent is within the scope of its authority as
39 agency or agent for the title insurer, and promising to be responsible
40 for the misapplication of funds or documents by the agency or agent or
41 its failure to follow written instructions in connection with the closing.

381.062. In order to be licensed to do an insurance business in
2 this state, a title insurer shall establish and maintain a minimum
3 paid-in capital of not less than eight hundred thousand dollars and, in
4 addition, surplus of at least eight hundred thousand dollars.

381.065. 1. The net retained liability of a title insurer for a single
2 risk in regard to property located in this state, whether assumed
3 directly or as reinsurance, shall not exceed the aggregate of fifty
4 percent of surplus as regards policyholders plus the statutory premium
5 reserve less the company's investment in title plants, all as shown in
6 the most recent annual statement of the insurer on file with the
7 director.

8 2. For purposes of this chapter:

9 (1) A single risk shall be the insured amount of any title
10 insurance policy, except that, where two or more title insurance
11 policies are issued simultaneously covering different estates in the
12 same real property, a single risk shall be the sum of the insured
13 amounts of all the title insurance policies; and

14 (2) A policy under which a claim payment reduces the amount of
15 insurance under one or more other title insurance policies shall be
16 included in computing the single risk sum only to the extent that its
17 amount exceeds the aggregate amount of the policy or policies whose
18 amount of insurance is reduced.

19 3. A title insurer may obtain reinsurance for all or any part of its
20 liability under its title insurance policies or reinsurance agreements
21 and may also reinsure title insurance policies issued by other title
22 insurers on single risks located in this state or elsewhere. Reinsurance
23 on policies issued on properties located in this state may be obtained
24 from any title insurers licensed to transact title insurance business in
25 this state, any other state, or the District of Columbia and which have
26 a combined capital and surplus of at least one million six hundred
27 thousand dollars.

28 4. The director may waive the limitation of this section for a
29 particular risk upon application of the title insurer and for good cause

30 shown.

381.068. In determining the financial condition of a title insurer
2 doing business under this chapter, the general investment provisions
3 of sections 379.080 to 379.082, RSMo, shall apply; except that, an
4 investment in a title plant or plants in an amount equal to the actual
5 cost shall be allowed as an admitted asset for title insurers. The
6 aggregate amount of the investment shall not exceed twenty percent of
7 surplus to policyholders, as shown on the most recent annual statement
8 of the title insurer on file with the director.

381.072. 1. In determining the financial condition of a title
2 insurer doing business under this chapter, the general provisions of the
3 laws regulating the business of insurance requiring the establishment
4 of reserves sufficient to cover all known and unknown liabilities
5 including allocated and unallocated loss adjustment expense, shall
6 apply; except that, a title insurer shall establish and maintain:

7 (1) (a) A known claim reserve in an amount estimated to be
8 sufficient to cover all unpaid losses, claims, and allocated loss
9 adjustment expenses arising under title insurance policies for which
10 the title insurer may be liable, and for which the insurer has
11 discovered or received notice by or on behalf of the insured or escrow
12 or security depositor;

13 (b) Upon receiving notice from or on behalf of the insured of a
14 title defect in or lien or adverse claim against the title of the insured
15 that may result in a loss or cause expense to be incurred in the proper
16 disposition of the claim, the title insurer shall determine the amount
17 to be added to the reserve, which amount shall reflect a careful
18 estimate of the loss or loss expense likely to result by reason of the
19 claim;

20 (c) Reserves required under this section may be revised from
21 time to time and shall be redetermined at least once each year;

22 (2) A statutory or unearned premium reserve established and
23 maintained as follows:

24 (a) A domestic title insurer shall establish and maintain an
25 unearned premium reserve computed in accordance with this section,
26 and all sums attributed to such reserve shall at all times and for all
27 purposes be considered and constitute unearned portions of the
28 original premiums. This reserve shall be reported as a liability of the

29 title insurer in its financial statements;

30 (b) The unearned premium reserve shall be maintained by the
31 title insurer for the protection of holders of title insurance
32 policies. Except as provided in this section, assets equal in value to the
33 reserve are not subject to distribution among creditors or stockholders
34 of the title insurer until all claims of policyholders or claims under
35 reinsurance contracts have been paid in full, and all liability on the
36 policies or reinsurance contracts has been paid in full and discharged
37 or lawfully reinsured;

38 (c) The unearned premium reserve shall consist of:

39 a. The amount of the unearned premium reserve on January 1,
40 2007; and

41 b. A sum equal to fifteen cents for each one thousand dollars of
42 net retained liability under each title insurance policy, excluding
43 mortgagee's policies simultaneously issued with owner's policies or
44 owner's leasehold policies of the same or greater amount, on a single
45 risk written on properties located in this state and issued after January
46 1, 2007;

47 (d) Amounts placed in the unearned premium reserve in any year
48 in accordance with paragraph (c) of this subdivision shall be deducted
49 in determining the net profit of the title insurer for that year;

50 (e) A title insurer shall release from the unearned premium
51 reserve a sum equal to ten percent of the amount added to the reserve
52 during a calendar year on July first of each of the five years following
53 the year in which the sum was added, and shall release from the
54 unearned premium reserve a sum equal to three and one-third percent
55 of the amount added to the reserve during that year on each succeeding
56 July first until the entire amount for that year has been released. The
57 amount of the unearned premium reserve or similar unearned premium
58 reserve maintained before January 1, 2007, shall be released in
59 accordance with the law in effect immediately before January 1, 2007;

60 (f) a. Each domestic and foreign title insurer shall file annually
61 with the audited financial report required under section 375.1032,
62 RSMo, an actuarial certificate made by a member in good standing of
63 the American Academy of Actuaries, or by an actuary permitted to
64 make such certificate by the commissioner, superintendent or director
65 of the department of insurance of the state of incorporation of a foreign

66 title insurer;

67 **b. The actuarial certification shall conform to the annual**
68 **statement instructions for title insurers adopted by the National**
69 **Association of Insurance Commissioners and shall include the actuary's**
70 **professional opinion of the insurer's reserves as of the date of the**
71 **annual statement. The reserves analyzed under this section shall**
72 **include reserves for known claims, including adverse developments on**
73 **known claims, and reserves for incurred but not reported claims;**

74 **(g) Each domestic and foreign title insurer shall establish a**
75 **supplemental reserve in the amount by which the actuarially certified**
76 **reserves exceed the total of the known claim reserve and statutory**
77 **premium reserve as set forth in the title insurer's annual financial**
78 **report, subject to this subdivision.**

79 **2. A foreign or alien title insurer licensed to transact title**
80 **insurance business in this state shall maintain at least the same**
81 **reserves on title insurance policies issued on properties located in this**
82 **state as are required of domestic title insurers, unless the laws of the**
83 **jurisdiction of domicile of the foreign or alien title insurer require a**
84 **higher amount.**

381.075. 1. Sections 375.570 to 375.750, RSMo, and sections
2 **375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to**
3 **this chapter, except as otherwise provided in this section. In applying**
4 **such sections, the court shall consider the unique aspects of title**
5 **insurance and shall have broad authority to fashion relief that provides**
6 **for the maximum protection of the title insurance policyholders.**

7 **2. Security and escrow funds held by or on behalf of the title**
8 **insurer shall not become general assets and shall be administered as**
9 **secured claims as defined in section 375.1152, RSMo.**

10 **3. Title insurance policies that are in force at the time an order**
11 **of liquidation is entered shall not be canceled except upon a showing**
12 **to the court of good cause by the liquidator. The determination of good**
13 **cause shall be within the discretion of the court. In making this**
14 **determination, the court shall consider the unique aspects of title**
15 **insurance and all other relevant circumstances.**

16 **4. The court may set appropriate dates that potential claimants**
17 **must file their claims with the liquidator. The court may set different**
18 **dates for claims based upon the title insurance policy than for all other**

19 claims. In setting dates, the court shall consider the unique aspects of
20 title insurance and all other relevant circumstances.

21 5. As of the date of the order of insolvency or liquidation, all
22 premiums paid, due or to become due under policies of the title
23 insurers, shall be fully earned. It shall be the obligation of title
24 agencies, title agents, insureds, or representatives of the title insurer
25 to pay fully earned premium to the liquidator or rehabilitator.

381.076. As a condition of doing business in this state, each title
2 insurer shall be liable for an assessment to pay all unpaid title
3 insurance claims, including claims under section 381.027, on real
4 property in this state for any title insurer which is liquidated with
5 unpaid outstanding claims. The director, as receiver, shall assess all
6 title insurers on a pro rata basis determined by their writings in this
7 state for amounts necessary to pay the claims. A title insurer is not
8 required to pay an amount in excess of one-tenth of its surplus as to
9 policyholders.

381.085. 1. A title insurer shall not deliver or issue for delivery
2 or permit any of its authorized title agencies or title agents to deliver
3 in this state, any form, in connection with title insurance written,
4 unless it has been filed with the director thirty days prior to use.

5 2. Forms covered by this section shall include:

6 (1) Title insurance policies, including standard form
7 endorsements;

8 (2) Title insurance commitments issued prior to the issuance of
9 a title insurance policy; and

10 (3) Closing or settlement protection letters.

11 3. Any term or condition related to an insurance coverage
12 provided by an approved title insurance policy or any exception to the
13 coverage, except those ascertained from a search and examination of
14 records relating to a title or inspection or survey of a property to be
15 insured, may only be included in the policy after the term, condition or
16 exception has been filed with the director and approved as herein
17 provided.

381.112. For purposes of the premium tax imposed by sections
2 148.320 and 148.340, RSMo, the premium income received by a title
3 insurer shall mean the amount within the definition of "premium"
4 contained in section 381.005.

381.113. 1. A policy issuance fee is imposed on each title insurer for every title insurance policy issued in the state of Missouri. The policy issue fee shall be established by rule by the director and shall be based on the department of insurance cost of regulating the title insurance industry. However, in no case shall the fee exceed two dollars. The policy fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes.

2. All funds received under the provisions of this section shall be transmitted by the director of the department of insurance to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund established under section 374.150, RSMo. Expenditures necessitated by this chapter may be paid from funds appropriated from the department of insurance dedicated fund by the general assembly.

3. The director may promulgate rules setting forth the standards for remittance of the policy fees. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2007, shall be invalid and void.

381.115. 1. It is unlawful for any person to act in the capacity of a title agency, unless the person is a licensed business entity producer under subsection 2 of section 375.015, RSMo.

2. It is unlawful for any person to act in the capacity of a title agent, unless the person is a licensed individual producer under subsection 1 of section 375.015, RSMo.

3. It is unlawful for any title insurer to contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is licensed as required in this section.

4. An individual employed by a title insurer, or licensed title

12 agency, or title agent to whom the insurer, agency, or agent delegates
13 authority to act on that agency's or agent's behalf shall be individually
14 licensed as an individual producer under subsection 1 of section
15 375.015, RSMo, if such employee performs any of the functions of a title
16 agent as defined in section 381.009. The director may adopt rules,
17 regulations, and requirements relating to licensing and practices of
18 persons acting in the capacity of title agencies or agents. These
19 persons may include title agencies, title agents, employees of title
20 insurers, title agencies, or title agents, and persons acting on behalf of
21 title insurers, title agencies, or title agents. This subsection is not
22 intended to include persons performing clerical functions.

23 5. Every title agency licensed in this state shall:

24 (1) Exclude or eliminate the word insurer, insurance company,
25 or underwriter from its business name, unless the word agency is also
26 included as part of the name; and

27 (2) Provide, in a timely fashion, each title insurer with which it
28 places business any information the title insurer requests in order to
29 comply with reporting requirements of the director.

30 6. A title agency or title agent licensed in this state prior to the
31 effective date of this chapter shall have ninety days after the effective
32 date of this chapter to comply with the requirements of this section.

33 7. If the title insurer, agency, or title agent delegates the title
34 search to a third party, such as an abstract company, the insurer,
35 agency, or agent must first obtain proof that the third party is
36 operating in compliance with rules and regulations established by the
37 director and the third party shall provide the insurer, agency, or agent
38 with access to and the right to copy all accounts and records
39 maintained by the third party with respect to business placed with the
40 title insurer. Proof from the third party may consist of a signed
41 statement indicating compliance, and shall be effective for a three-year
42 period.

43 8. A violation of any provision under this section is a level three
44 violation under section 374.049, RSMo.

381.118. 1. Each title agency shall designate an individual as a
2 qualified principal, who as a condition of licensure, shall successfully
3 pass an examination developed by the producer advisory board
4 established by section 375.019, RSMo, and approved by the

5 director. Each title agent shall successfully pass an examination
6 developed by the producer advisory board and approved by the
7 director. Upon request by a title agency or agent and for good cause,
8 the director, by order, may waive the requirements of this
9 subsection. The examination requirement in this subsection shall be
10 waived for all title agents and qualified principals who have
11 continually been licensed in this state as a title agent or title insurance
12 producer from at least January 1, 2004, through January 1, 2007.

13 2. Each title agent licensed to sell title insurance in this state,
14 unless exempt under subsection 8 of this section, shall successfully
15 complete courses of study as required by this section. Any person
16 licensed to act as a title agent shall, during each two years, attend
17 courses or programs of instruction or attend seminars equivalent to a
18 minimum of eight hours of instruction. The initial such two-year
19 period shall begin January first of the year next following the effective
20 date of this chapter.

21 3. Subject to approval by the director, the courses or programs
22 of instruction which shall be deemed to meet the director's standards
23 for continuing educational requirements shall include, but not be
24 limited to, the following:

25 (1) An insurance-related course taught by an accredited college
26 or university or qualified instructor who has taught a course of
27 insurance law at such institution;

28 (2) A course or program of instruction or seminar developed or
29 sponsored by any authorized insurer, recognized agents' association or
30 insurance trade association. A local agents' group may also be
31 approved if the instructor receives no compensation for services;

32 (3) Courses approved for continuing legal education credit by the
33 Missouri Bar.

34 4. A person teaching any approved course of instruction or
35 lecturing at any approved seminar shall qualify for one and one-half
36 times the number of classroom hours as would be granted to a person
37 taking and successfully completing such course, seminar or program,
38 but the credit may be credited no more than once a year.

39 5. Excess classroom hours accumulated during any two-year
40 period may be carried forward to the two-year period immediately
41 following the two-year period in which the course, program, or seminar

42 was held.

43 6. For good cause shown, the director may grant an extension of
44 time during which the educational requirements imposed by this
45 section may be completed, but such extension of time shall not exceed
46 the period of one calendar year. The director may grant an individual
47 waiver of the mandatory continuing education requirement upon a
48 showing by the licensee that it is not feasible for the licensee to satisfy
49 the requirements prior to the renewal date. Waivers may be granted
50 for reasons including, but not limited to:

51 (1) Serious physical injury or illness;

52 (2) Active duty in the armed services for an extended period of
53 time;

54 (3) Residence outside the United States; or

55 (4) Licensee is at least seventy years of age and is currently
56 licensed as a title agent.

57 7. Every person subject to the provisions of this section shall
58 furnish in a form satisfactory to the director, written certification as
59 to the courses, programs, or seminars of instruction taken and
60 successfully completed by such person.

61 8. The provisions of this section shall not apply to those natural
62 persons holding or applying for a license to act as a title agent in
63 Missouri who reside in a state that has enacted and implemented a
64 mandatory continuing education law or regulation pertaining to title
65 agents. However, those natural persons holding or applying for a
66 Missouri agent license who reside in states which have no mandatory
67 continuing education law or regulations shall be subject to all the
68 provisions of this section to the same extent as resident Missouri title
69 agents.

70 9. Rules necessary to implement and administer this section shall
71 be promulgated by the director of the department of insurance,
72 including, but not limited to, rules regarding the following:

73 (1) The producer advisory board established by section 375.019,
74 RSMo, shall be utilized by the director to assist the director in
75 determining acceptable content of courses, programs and seminars to
76 include classroom equivalency;

77 (2) Every applicant seeking approval by the director of a
78 continuing education course under this section shall pay to the director

79 a filing fee of fifty dollars per course, except that such total fee shall
80 not exceed two hundred fifty dollars per year for any single
81 applicant. Fees shall be waived for local agents' groups if the
82 instructor receives no compensation for services. Such fee shall
83 accompany any application form required by the director. Courses
84 shall be approved for a period of no more than one year. Applicants
85 holding courses intended to be offered for a longer period must reapply
86 for approval.

87 10. All funds received under the provisions of this section shall
88 be transmitted by the director of the department of insurance to the
89 department of revenue for deposit in the state treasury to the credit of
90 the department of insurance dedicated fund. All expenditures required
91 by this section shall be paid from funds appropriated from the
92 department of insurance dedicated fund by the general assembly.

93 11. When a title agent pays his or her biennial renewal fee, such
94 agent shall also furnish the written certification required by this
95 section.

96 12. Any rule or portion of a rule, as that term is defined in
97 section 536.010, RSMo, that is created pursuant to the authority
98 delegated in this section shall become effective only if it complies with
99 and is subject to all of the provisions of chapter 536, RSMo, and, if
100 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
101 are nonseverable and if any of the powers vested with the general
102 assembly pursuant to chapter 536, RSMo, to review, to delay the
103 effective date, or to disapprove and annul a rule are subsequently held
104 unconstitutional, then the grant of rulemaking authority and any rule
105 proposed or adopted after January 1, 2007, shall be invalid and void.

381.122. The director may during normal business hours
2 examine, audit and inspect any and all books and records maintained
3 by a title insurer, title agency, or title agent under this chapter.

381.410. As used in this section and section 381.412, the following
2 terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on the
4 financial institution, which is signed only by an officer or employee of
5 such institution, is a direct obligation of such institution, and is
6 provided to a customer of such institution or acquired from such
7 institution for remittance purposes;

8 (2) "Certified funds", United States currency, funds conveyed by
9 a cashier's check, certified check, teller's check, as defined in Federal
10 Reserve Regulations CC, or wire transfers, including written advice
11 from a financial institution that collected funds have been credited to
12 the settlement agent's account;

13 (3) "Director", the director of the department of insurance, unless
14 the settlement agent's primary regulator is the division of
15 finance. When the settlement agent is regulated by such division, that
16 division shall have jurisdiction over this section and section 381.412;

17 (4) "Financial institution":

18 (a) A person or entity doing business under the laws of this state
19 or the United States relating to banks, trust companies, savings and
20 loan associations, credit unions, commercial and consumer finance
21 companies, industrial loan companies, insurance companies, small
22 business investment corporations licensed under the Small Business
23 Investment Act of 1958 (15 U.S.C. Section 661, et seq.) as amended, or
24 real estate investment trusts as defined in 26 U.S.C. Section 856, as
25 amended, or institutions constituting the Farm Credit System under the
26 Farm Credit Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended; or

27 (b) A mortgage loan company or mortgage banker doing business
28 under the laws of this state or the United States which is subject to
29 licensing, supervision, or auditing by the Federal National Mortgage
30 Association, or the Federal Home Loan Mortgage Corporation, or the
31 United States Veterans' Administration, or the Government National
32 Mortgage Association, or the United States Department of Housing and
33 Urban Development, or a successor of any of the foregoing agencies or
34 entities, as an approved seller or servicer, if their principal place of
35 business is in Missouri or a state which is contiguous to Missouri;

36 (5) "Settlement agent", a person, corporation, partnership, or
37 other business organization which accepts funds and documents as
38 fiduciary for the buyer, seller or lender for the purposes of closing a
39 sale of an interest in real estate located within the state of Missouri,
40 and is not a financial institution, or a member in good standing of the
41 Missouri Bar, or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds for closing a
2 sale of an interest in real estate shall require a buyer, seller or lender
3 who is not a financial institution to convey such funds to the settlement

4 agent as certified funds. A check:

5 (1) Drawn on an escrow account of a licensed real estate broker,
6 as regulated and described in section 339.105, RSMo;

7 (2) Drawn on an escrow account of a title insurer or title
8 insurance agency licensed to do business in Missouri;

9 (3) Drawn on an agency of the United States of America, the state
10 of Missouri, or any county or municipality of the state of Missouri; or

11 (4) Drawn on an account by a financial institution;

12 shall be exempt from the provisions of this section.

13 2. It is unlawful for any title insurer, title agency, or title agent,
14 as defined in section 381.009, to make any payment, disbursement or
15 withdrawal from an escrow account which it maintains as a depository
16 of funds received from the public for the settlement of real estate
17 transactions unless a corresponding deposit of funds was made to the
18 escrow account for the benefit of the payee or payees:

19 (1) At least ten days prior to such payment, disbursement, or
20 withdrawal;

21 (2) Which consisted of certified funds; or

22 (3) Consisted of a check made exempt from this section by the
23 provisions of subsection 1 of this section.

24 3. A violation of any provision of this section is a level two
25 violation under section 374.049, RSMo.

[381.003. 1. Sections 381.003 to 381.125 shall be known
2 and may be cited as the "Missouri Title Insurance Act".

3 2. Sections 381.009 to 381.048 shall apply to all persons
4 engaged in the business of title insurance in this state. Sections
5 381.052 to 381.112 shall apply to all title insurers engaged in the
6 business of title insurance in this state. Sections 381.115 to
7 381.125 shall apply to all title agencies engaged in the business of
8 title insurance in this state.

9 3. Except as otherwise expressly provided in this chapter
10 and except where the context otherwise requires, all provisions of
11 the insurance code applying to insurance and insurance companies
12 generally shall apply to title insurance, title insurers and title
13 agents.]

[381.009. As used in this chapter, the following terms

2 mean:

3 (1) "Abstract of title" or "abstract", a written history,
4 synopsis or summary of the recorded instruments affecting the title
5 to real property;

6 (2) "Affiliate", a specific person that directly, or indirectly
7 through one or more intermediaries, controls, or is controlled by, or
8 is under common control with, the person specified;

9 (3) "Affiliated business", any portion of a title insurance
10 agency's business written in this state that was referred to it by a
11 producer of title insurance business or by an associate of the
12 producer, where the producer or associate, or both, have a financial
13 interest in the title agency;

14 (4) "Associate", any:

15 (a) Business organized for profit in which a producer of title
16 business is a director, officer, partner, employee or an owner of a
17 financial interest;

18 (b) Employee of a producer of title business;

19 (c) Franchisor or franchisee of a producer of title business;

20 (d) Spouse, parent or child of a producer of title insurance
21 business who is a natural person;

22 (e) Person, other than a natural person, that controls, is
23 controlled by, or is under common control with, a producer of title
24 business;

25 (f) Person with whom a producer of title insurance business
26 or any associate of the producer has an agreement, arrangement or
27 understanding, or pursues a course of conduct, the purpose or effect
28 of which is to provide financial benefits to that producer or
29 associate for the referral of business;

30 (5) "Bona fide employee of the title insurer", an individual
31 who devotes substantially all of his or her time to performing
32 services on behalf of a title insurer and whose compensation for
33 those services is in the form of salary or its equivalent paid by the
34 title insurer;

35 (6) "Control", including the terms "controlling", "controlled
36 by" and "under common control with", the possession, direct or
37 indirect, of the power to direct or cause the direction of the

management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(7) "County" or "counties" includes any city not within a county;

(8) "Direct operations", that portion of a title insurer's operations which are attributable to business written by a bona fide employee;

(9) "Director", the director of the department of insurance, or the director's representatives;

(10) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(11) "Escrow, settlement or closing fee", the consideration for supervising or handling the actual execution, delivery or recording of transfer and lien documents and for disbursing funds;

(12) "Financial interest", a direct or indirect legal or beneficial interest, where the holder is or will be entitled to five percent or more of the net profits or net worth of the entity in which the interest is held;

(13) "Foreign title insurer", any title insurer incorporated or organized pursuant to the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(14) "Geographically indexed or retrievable", a system of

74 keeping recorded documents which includes as a component a
75 method for discovery of the documents by:

76 (a) Searching an index arranged according to the
77 description of the affected land; or

78 (b) An electronic search by description of the affected land;

79 (15) "Net retained liability", the total liability retained by
80 a title insurer for a single risk, after taking into account any ceded
81 liability and collateral, acceptable to the director, and maintained
82 by the insurer;

83 (16) "Non-United States title insurer", any title insurer
84 incorporated or organized pursuant to the laws of any foreign
85 nation or any province or territory;

86 (17) "Premium", the consideration paid by or on behalf of
87 the insured for the issuance of a title insurance policy or any
88 endorsement or special coverage. It does not include consideration
89 paid for settlement or escrow services or noninsurance-related
90 information services;

91 (18) "Producer", any person, including any officer, director
92 or owner of five percent or more of the equity or capital of any
93 person, engaged in this state in the trade, business, occupation or
94 profession of:

95 (a) Buying or selling interests in real property;

96 (b) Making loans secured by interests in real property; or

97 (c) Acting as broker, agent, representative or attorney of a
98 person who buys or sells any interest in real property or who lends
99 or borrows money with the interest as security;

100 (19) "Qualified depository institution", an institution that
101 is:

102 (a) Organized or, in the case of a United States branch or
103 agency office of a foreign banking organization, licensed pursuant
104 to the laws of the United States or any state and has been granted
105 authority to operate with fiduciary powers;

106 (b) Regulated, supervised and examined by federal or state
107 authorities having regulatory authority over banks and trust
108 companies;

109 (c) Insured by the appropriate federal entity; and

110 (d) Qualified under any additional rules established by the
111 director;

112 (20) "Referral", the directing or the exercising of any power
113 or influence over the direction of title insurance business, whether
114 or not the consent or approval of any other person is sought or
115 obtained with respect to the referral;

116 (21) "Search", "search of the public records" or "search of
117 title", a search of those records established by the laws of this state
118 for the purpose of imparting constructive notice of matters relating
119 to real property to purchasers for value and without knowledge;

120 (22) "Security" or "security deposit", funds or other property
121 received by the title insurer as collateral to secure an indemnitor's
122 obligation under an indemnity agreement pursuant to which the
123 insurer is granted a perfected security interest in the collateral in
124 exchange for agreeing to provide coverage in a title insurance
125 policy for a specific title exception to coverage;

126 (23) "Subsidiary", an affiliate controlled by a person directly
127 or indirectly through one or more intermediaries;

128 (24) "Title agency" means an authorized person who issues
129 title insurance on behalf of a title insurer. An attorney licensed to
130 practice law in this state who issues title insurance as a part of his
131 or her law practice, but does not maintain or operate a title
132 insurance business separate from such law practice is not a title
133 agency;

134 (25) "Title agent" or "agent", an attorney licensed to
135 practice law in this state who issues title insurance as part of his
136 or her law practice, but who is not affiliated with or acting on
137 behalf of a title agency, or an authorized person who, on behalf of
138 a title agency or on behalf of a title agent not affiliated with a title
139 agency, performs one or more of the following acts in conjunction
140 with the issuance of a title insurance commitment or policy:

141 (a) Determines insurability, based upon a review of a search
142 of title;

143 (b) Performs searches;

144 (c) Handles escrows, settlements or closings; or

145 (d) Solicits or negotiates title insurance business;

146 (26) "Title insurance business" or "business of title
147 insurance":

148 (a) Issuing as insurer or offering to issue as insurer a title
149 insurance policy;

150 (b) Transacting or proposing to transact by a title insurer
151 any of the following activities when conducted or performed in
152 contemplation of and in conjunction with the issuance of a title
153 insurance policy:

154 a. Soliciting or negotiating the issuance of a title insurance
155 policy;

156 b. Guaranteeing, warranting or otherwise insuring the
157 correctness of title searches for all instruments affecting titles to
158 real property, any interest in real property, cooperative units and
159 proprietary leases and for all liens or charges affecting the same;

160 c. Handling of escrows, settlements or closings;

161 d. Executing title insurance policies;

162 e. Effecting contracts of reinsurance; or

163 f. Abstracting, searching or examining titles;

164 (c) Guaranteeing, warranting or insuring searches or
165 examinations of title to real property or any interest in real
166 property;

167 (d) Guaranteeing or warranting the status of title as to
168 ownership of or liens on real property by any person other than the
169 principals to the transaction;

170 (e) Promising to purchase or repurchase for consideration
171 an indebtedness because of a title defect, whether or not involving
172 a transfer of risk to a third person; or

173 (f) Promising to indemnify the holder of a mortgage or deed
174 of trust against loss from the failure of the borrower to pay the
175 mortgage or deed of trust when due if the property fails to yield
176 sufficient proceeds upon foreclosure to satisfy the debt, when one
177 or both of the following conditions exist:

178 a. The security has been impaired by the discovery of a
179 previously unknown property interest in favor of one who is not
180 liable for the payment of the mortgage or deed of trust; or

181 b. Perfection of the position of the mortgage or deed of trust

182 which was assured to exist cannot be obtained, notwithstanding
183 timely recordation with the recorder of deeds of the county in which
184 the property is located; or

185 (g) Doing or proposing to do any business substantially
186 equivalent to any of the activities listed in this subdivision in a
187 manner designed to evade the provisions of this chapter;

188 (27) "Title insurance commitment" or "commitment", a
189 preliminary report, commitment or binder issued prior to the
190 issuance of a title insurance policy containing the terms,
191 conditions, exceptions and other matters incorporated by reference
192 under which the title insurer is willing to issue its title insurance
193 policy. A title insurance commitment is not an abstract of title;

194 (28) "Title insurance policy" or "policy", a contract insuring
195 or indemnifying owners of, or other persons lawfully interested in,
196 real property or any interest in real property, against loss or
197 damage arising from any or all of the following conditions existing
198 on or before the policy date and not excepted or excluded:

199 (a) Title to the estate or interest in land being otherwise
200 than as stated in the policy;

201 (b) Defects in or liens or encumbrances on the insured title;

202 (c) Unmarketability of the insured title;

203 (d) Lack of legal right of access to the land;

204 (e) Invalidity or unenforceability of the lien of an insured
205 mortgage;

206 (f) The priority of a lien or encumbrance over the lien of any
207 insured mortgage;

208 (g) The lack of priority of the lien of an insured mortgage
209 over a statutory lien for services, labor or material;

210 (h) The invalidity or unenforceability of an assignment of
211 the insured mortgage; or

212 (i) Rights or claims relating to the use of or title to the
213 land;

214 (29) "Title insurer" or "insurer", a company organized
215 pursuant to laws of this state for the purpose of transacting the
216 business of title insurance and any foreign or non-United States
217 title insurer licensed in this state to transact the business of title

218 insurance;

219 (30) "Title plant", a set of records encompassing at least the
220 most recent forty-five years, consisting of documents, maps, surveys
221 or entries affecting title to real property or any interest in or
222 encumbrance on the property, which have been filed or recorded in
223 the jurisdiction for which the title plant is established or
224 maintained. The records in the title plant shall be geographically
225 indexed or retrievable as to those records containing a legal
226 description of affected land, and otherwise by name of affected
227 person;

228 (31) "Underwrite", the authority to accept or reject risk on
229 behalf of the title insurer.]

[381.011. 1. Sections 381.011 to 381.241 shall be known
2 and may be cited as the "Missouri Title Insurance Act".

3 2. The purpose of sections 381.011 to 381.241 is to provide
4 the state of Missouri with a comprehensive body of law for the
5 effective regulation and supervision of title insurance business
6 transacted within this state in response to the McCarran-Ferguson
7 Act, Sections 1011-1015, Title 15, United States Code.]

[381.015. 1. When a title insurance commitment issued by
2 a title insurer, title agency or title agent includes an offer to issue
3 an owner's policy covering the resale of owner-occupied residential
4 property, the commitment shall incorporate the following statement
5 in bold type:

6 "Please read the exceptions and the terms shown or referred
7 to herein carefully. The exceptions are meant to provide you with
8 notice of matters which are not covered under the terms of the title
9 insurance policy and should be carefully considered."

10 2. A title insurer, title agency or title agent issuing a
11 lender's title insurance policy in conjunction with a mortgage loan
12 made simultaneously with the purchase of all or part of the real
13 estate securing the loan, where no owner's title insurance policy
14 has been requested, shall give written notice, on a form prescribed
15 or approved by the director, to the purchaser-mortgagor at the time
16 the commitment is prepared. The notice shall explain that a
17 lender's title insurance policy is to be issued protecting the

mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and accurate representation of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the date the agency's or agent's federal income tax return for the same year is filed. Attorneys actively engaged in the practice of law, in addition to that related to title insurance business, are exempt from the requirements of this subsection.

3. The title insurer shall conduct reviews of the

underwriting, claims and escrow practices of its agencies and agents which shall include a review of the agency's or agent's policy blank inventory and processing operations. If any such title agency or title agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or title agent not affiliated with a title agency. The title insurer shall conduct a review of each of its agencies and agents at least triennially commencing January first of the year first following January 1, 2001.

4. Within thirty days of executing or terminating a contract with a title agency or title agent not affiliated with a title agency, the insurer shall provide notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title agency or title agent shall be made on a form promulgated by the director.

5. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

6. The title insurer shall have on file proof that the title agency or title agent is licensed by this state.

7. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

8. Each violation of any provision of this section is a class B violation as that term is defined in section 381.045.]

[381.021. 1. Sections 381.011 to 381.241 shall apply to all persons engaged in the business of title insurance in this state.

2. Except as otherwise expressly provided in sections 381.011 to 381.241, and except where the context otherwise requires, all provisions of the insurance laws of this state applying to insurance and insurance companies generally shall apply to title insurance and title insurance companies. No law of this state enacted after September 28, 1987, that is inconsistent with the

provisions of such sections shall be applicable to the business of title insurance unless such law specifically states that it is to be applicable to the business of title insurance.

3. Nothing in sections 381.011 to 381.241 shall be construed to authorize the practice of law by any person who is not duly admitted to practice law in this state nor shall it be construed to authorize the director to regulate the practice of law or the sale of real estate.]

[381.022. 1. A title insurer, title agency or title agent not affiliated with a title agency may operate as an escrow, security, settlement or closing agent, provided that:

(1) All funds deposited with the title insurer, title agency or title agent not affiliated with a title agency in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(a) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer, title agency or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(b) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted;

(2) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or pursuant to an order of a court of competent jurisdiction;

(3) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

29 (a) What actions the indemnitor shall take to satisfy his or
30 her obligation under the agreement;

31 (b) The duties of the title insurer, title agency or title agent
32 not affiliated with a title agency with respect to disposition of the
33 funds held, including a requirement to maintain evidence of the
34 disposition of the title exception before any balance may be paid
35 over to the depositing party or his or her designee; and

36 (c) Any other provisions the director may require;

37 (4) Any interest received on funds deposited in connection
38 with any escrow, settlement, security deposit or closing may be
39 retained by the title insurer, title agency or title agent not
40 affiliated with a title agency as compensation for administration of
41 the escrow or security deposit, unless the instructions for the funds
42 or a governing statute provides otherwise;

43 (5) Each violation of this subsection is a class A violation
44 as that term is defined in section 381.045.

45 2. The title agency or title agent not affiliated with an
46 agency shall cooperate with its underwriters in the conduct by the
47 underwriters of reviews of the agency's or agent's escrow,
48 settlement, closing and security deposit accounts. The title insurer
49 shall provide a copy of the report of each such review it performs
50 to the director. The director may promulgate rules setting forth
51 the minimum threshold level at which a review would be required,
52 the standards thereof and the form of report required.

53 3. If the title agency or title agent not affiliated with an
54 agency is appointed by two or more title insurers and maintains
55 fiduciary trust accounts in connection with providing escrow or
56 closing settlement services, the title agency or title agent shall
57 allow each title insurer reasonable access to the accounts and any
58 or all of the supporting account information in order to ascertain
59 the safety and security of the funds held by the title agency or title
60 agent.

61 4. (1) Nothing in this chapter shall be deemed to prohibit
62 the recording of documents prior to the time funds are available for
63 disbursement with respect to a transaction in which a title insurer,
64 title agency or title agent not affiliated with a title agency is the

65 settlement agent, provided all parties to whom payment will
66 become due upon such recording consent thereto in writing.

67 (2) The settlement agent shall record all deeds and security
68 instruments for real estate closings handled by it within three
69 business days after completion of all conditions precedent thereto.

70 (3) Each violation of this subsection is a class C violation
71 as that term is defined in section 381.045.]

[381.025. 1. A title insurer, title agency, title agent or
2 other person shall not give or receive, directly or indirectly, any
3 consideration for the referral of title insurance business or escrow
4 or other service provided by a title insurer, title agency or title
5 agent. Each violation of this subsection is a class A violation as
6 that term is defined in section 381.045.

7 2. Any title insurer, title agency or title agent doing
8 business in the same county as a title insurer, title agency or title
9 agent who may be in violation of the prohibitions or limitations of
10 this section shall have standing to seek injunctive relief against the
11 violating title insurer, title agency or title agent in the event the
12 department declines or fails to enforce this section within forty-five
13 days following receipt of written notice of such violation. In any
14 action pursuant to this subsection, the court may award to the
15 successful party the court costs of the action together with
16 reasonable attorney fees.]

[381.028. No title insurer, title agency or title agent shall
2 participate in any transaction in which it knows that a producer or
3 other person requires, directly or indirectly, or through any trustee,
4 director, officer, agent, employee or affiliate, as a condition,
5 agreement or understanding to selling or furnishing any other
6 person a loan, or loan extension, credit, sale, property, contract,
7 lease or service, that the other person shall place a title insurance
8 policy of any kind with the title insurer or through a particular
9 title agency or agent. Each violation of this section is a class A
10 violation as that term is defined in section 381.045.]

[381.031. As used in sections 381.011 to 381.241, the
2 following terms mean:

3 (1) "Alien title insurer", any title insurer incorporated or

4 organized under the laws of any foreign nation or any province or
5 territory thereof;

6 (2) "Applicant", a person, whether or not a prospective
7 insured, who applies to a title insurer or title agent, or agency for
8 a title insurance policy and who, at the time of the application, is
9 not a title agent or agency;

10 (3) "Approved attorney", an attorney at law who is not an
11 agent or employee of a title insurer, and whose certification as to
12 status of title a title insurer is willing to accept as the basis for
13 issuance of its title insurance policy;

14 (4) "Charge", any fee billed by a title agent, agency, or title
15 insurer for the performance of services other than fees that fall
16 within the definition of premium in this section. "Charge" includes,
17 but is not limited to, fees for document preparation, fees for the
18 handling of escrows, settlements, or closing, and fees for services
19 commenced but not completed. "Charge" does not include fees
20 collected by a title insurer, title agency, or title agent in an escrow,
21 settlement or closing when the fees are limited to the amount billed
22 for services rendered by an entity independent of the title insurer,
23 title agent, or agency;

24 (5) "Controlled business", any portion of a title insurer's,
25 title agency's or title agent's business of title insurance in this
26 state, referred to it by any producer of title business or by any
27 associate of such producer, where the producer of title business, the
28 associate, or both, have a financial interest in the title insurer, title
29 agency, or title agent to which business is referred;

30 (6) "Director", the director of the department of insurance;

31 (7) "Domestic title insurer", a title insurer organized under
32 the laws of this state;

33 (8) "Escrow, settlement or closing fee", the consideration for
34 supervising the actual execution, delivery or recording of transfer
35 and lien documents and for disbursing funds;

36 (9) "Financial interest", any interest, legal or beneficial,
37 that entitles the holder directly or indirectly to one percent or more
38 of the net profits or net worth of the entity in which the interest is
39 held, but does not include payments of principal or interest made

40 to a mortgage holder of the title agency;

41 (10) "Foreign title insurer", any title insurer organized
42 under the laws of any other state of the United States, the District
43 of Columbia, or any other jurisdiction of the United States;

44 (11) "Gross operating revenue", all amounts received by a
45 title insurer, title agency, or title agent from premiums and
46 charges;

47 (12) "Net retained liability", the total liability retained by
48 a title insurer for a single risk, after taking into account the
49 deduction for ceded reinsured liability, if any;

50 (13) "Person", any natural person, partnership, association,
51 cooperative, corporation, trust, or other legal entity;

52 (14) "Premium", risk rates charged to the insured;

53 (15) "Producer of title business" or "producer", any person,
54 including any officer, director, or owner of five percent or more of
55 the equity or capital of any person, engaged in this state in the
56 trade, business, occupation or profession of:

57 (a) Buying or selling interests in real property;

58 (b) Making loans secured by interests in real property; or

59 (c) Acting as broker, agent, representative or attorney of a
60 person who buys or sells any interest in real property or who lends
61 or borrows money with such interest as security;

62 (16) "Single risk", the insured amount of any title insurance
63 policy, except that where two or more title insurance policies are
64 issued simultaneously covering different estates in the same real
65 property, "single risk" means the sum of the insured amounts of all
66 such title insurance policies. Any title insurance policy insuring a
67 mortgage interest, a payment under which reduces the insured
68 amount of a fee or leasehold title insurance policy, shall be
69 excluded in computing the amount of a single risk to the extent
70 that the insured amount of the mortgagee title insurance policy
71 does not exceed the insured amount of the fee or leasehold title
72 insurance policy;

73 (17) "Title agent" or "title insurance agent", any authorized
74 agent of a title insurer or representative of the title agent or
75 agency, who acts as a title agent in the solicitation of, negotiation

76 for, or procurement or making of any title insurance contract. The
77 following persons are not title agents or title insurance agents:

78 (a) Approved attorneys;

79 (b) Salaried officers or employees of title insurers, title
80 agents or title insurance agencies who do not do any of the
81 following:

82 a. Establish premiums for policies of title insurance;

83 b. Determine insurability; or

84 c. Issue commitments, policies or other contracts of title
85 insurance;

86 (18) "Title insurance agency" or "agency", any individual
87 transacting or doing business under any name other than his true
88 name, any partnership, unincorporated association or corporation,
89 transacting or doing business with the public or title insurance
90 companies as a title insurance agent;

91 (19) "Title insurance business" or "business of title
92 insurance" means:

93 (a) Issuing as insurer or offering to issue as insurer a title
94 insurance policy;

95 (b) Transacting or proposing to transact by a title insurer,
96 title agency, or title agent any of the following activities when
97 conducted or performed by a title agent, title agency, or title
98 insurer in conjunction with the issuance of its title insurance:

99 a. Soliciting or negotiating the issuance of a title insurance
100 policy;

101 b. Guaranteeing, warranting, or otherwise insuring the
102 correctness of title searches;

103 c. Handling of escrows, settlements, or closings;

104 d. Execution of title insurance policies, reports,
105 commitments, binders, and endorsements;

106 e. Effecting contracts of reinsurance; or

107 f. Abstracting, searching, or examining titles;

108 (c) Transacting by a title insurer, title agent, or agency of
109 matters subsequent to the issuance of a title insurance policy and
110 arising out of it; or

111 (d) Doing or proposing to do any business in substance

112 equivalent to any of the foregoing in order to evade any provision
113 of this act;

114 (20) "Title insurance policy" or "policy", a contract insuring
115 or indemnifying against loss or damage arising from any or all of
116 the following:

117 (a) Defects in or liens or encumbrances on the insured title;

118 (b) Unmarketability of the insured title; or

119 (c) Invalidity or unenforceability of liens or encumbrances
120 on the stated property.

121 "Title insurance policy" does not include a preliminary report,
122 binder, commitment, or abstract;

123 (21) "Title insurer", a company organized under laws of this
124 state for the purpose of transacting as insurer the business of title
125 insurance and any foreign or alien title insurer engaged in this
126 state in the business of title insurance as insurer;

127 (22) "Title plant", an index of the records of a county which
128 imparts constructive notice to purchasers of real property, which
129 encompasses at least the most recent forty-five years. The index
130 shall be kept geographically as to those records containing a legal
131 description of affected land, and otherwise by name of affected
132 person.]

[381.032. 1. No title insurer, may charge any rates
2 regulated by the state after January 1, 2001, except in accordance
3 with the premium rate schedule and manual filed with and
4 approved by the director in accordance with applicable statutes and
5 regulations governing rate filings. Premium rate schedules in
6 effect prior to January 1, 2001, may be used until new rate
7 schedules have been approved by the director. Title insurers shall
8 file their premium rate schedules within thirty days after January
9 1, 2001. Each violation of this subsection is a class C violation as
10 that term is defined in section 381.045. Nothing in this section
11 shall prevent an agent not affiliated with an agency from charging
12 for services that constitute the practice of law at the customary fee
13 charged by such person for legal services. To the extent the
14 premium fails to compensate the agent at such rate, the agent may
15 render an additional bill for such services on behalf of the agent's

16 law practice or law firm. The acceptance of any part of the
17 premium by the law firm of said agent shall not be a violation of
18 any provision of the Missouri title insurance act or the general
19 insurance statutes, regulations or bulletins regarding payment of
20 commissions to nonlicensed entities.

21 2. The director may establish rules, including rules
22 providing statistical plans, for use by all title insurers, title
23 agencies and title agents in the recording and reporting of revenue,
24 loss and expense experience in such form and detail as is necessary
25 to aid the director in the establishment of rates and fees.

26 3. The director may require that the information provided
27 pursuant to this section be verified by oath of the insurer's or
28 agency's president or vice president or secretary or actuary, as
29 applicable. The director may further require that the information
30 required pursuant to this section be subject to an audit conducted
31 at the expense of the title insurer or title agency by an independent
32 certified public accountant. The director shall have the authority
33 to establish a minimum threshold level at which an audit would be
34 required.

35 4. Information filed with the director relating to the
36 experience of a particular agency shall be kept confidential unless
37 the director finds it in the public interest to disclose the
38 information required of title insurers or title agencies pursuant to
39 this section. Prior to any such disclosure of confidential
40 information, the director shall provide notice and opportunity to be
41 heard to the title insurers and title agencies who would be affected
42 thereby.]

[381.035. No title insurance company, title agency or title
2 agent shall willfully withhold information from, or knowingly give
3 false or misleading information to the director, or to any title
4 insurance rating organization, of which the title insurance company
5 is a member or subscriber, which will affect the rates or fees
6 chargeable pursuant to this chapter. Each violation of this section
7 is a class A violation as that term is defined in section 381.045.]

[381.038. 1. Evidence of the examination of title and
2 determination of insurability generated by a title insurer engaged

in direct operations, title agency or title agent shall be preserved and maintained by such insurer, agency or agent for as long as appropriate to the circumstances but in no event less than fifteen years after the title insurance policy has been issued.

2. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency and title agent for as long as appropriate to the circumstances but in no event less than five years after the escrow or security deposit account has been closed.

3. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

4. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.041. 1. No person other than a domestic, foreign, or alien title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.

2. Each title insurer may engage in the title insurance business in this state if licensed to do so by the director and provide any other service related or incidental to the sale and transfer or financing of property.

3. A title insurer shall maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.]

[381.042. 1. The director may issue rules, regulations and orders necessary to carry out the provisions of this chapter.

2. No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.]

[381.045. 1. If the director determines that the title insurer or any other person has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the director may order:

(1) For each violation a monetary penalty which shall take into account the harm the violation caused or could have caused or

- 7 potential harm to the public and which shall not exceed:
- 8 (a) One thousand dollars per violation for a class A
- 9 violation;
- 10 (b) Five hundred dollars per violation for a class B
- 11 violation; and
- 12 (c) One hundred dollars per violation for a class C violation;
- 13 (2) Revocation or suspension of the title insurer's license;
- 14 or
- 15 (3) Both monetary penalty and revocation or suspension.
- 16 2. Nothing contained in this section shall affect the right of
- 17 the director to impose any other penalties provided for in the
- 18 insurance code.
- 19 3. Nothing contained in this chapter is intended to or shall
- 20 in any other manner limit or restrict the rights of policyholders,
- 21 claimants and creditors.]
- 2 [381.048. The director may bring an action in a court of
- 3 competent jurisdiction to enjoin violations of the Real Estate
- 4 Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.]
- 5 [381.051. 1. A title insurer, before issuing any title
- 6 insurance policy covering property located in this state, shall
- 7 deposit with the director of the department of insurance,
- 8 hereinafter referred to as the director, a sum of four hundred
- 9 thousand dollars, which shall be held for the security and
- 10 protection of the holders or beneficiaries under its title insurance
- 11 policies.
- 12 2. Assets deposited pursuant to this section may, with the
- 13 approval of the director, be exchanged from time to time for other
- 14 assets that qualify under subsection 3 of this section.
- 15 3. The depositing title insurer shall receive the income,
- 16 interests, and dividends on any assets deposited. The deposit
- 17 required under this section may be made in legal tender or in
- 18 investments now or hereafter permitted to domestic life insurers
- with regard to their capital, reserve and surplus. For capital and
- reserve deposits, sums deposited pursuant to this section shall be
- valued at their market value.
4. A title insurer that has deposited assets pursuant to this

19 section may, with the approval of the director, withdraw any part
20 of the assets so deposited. If any such title insurer continues to
21 engage in the business of title insurance, it shall not be permitted
22 to withdraw assets that would reduce the amount of its deposits
23 below the amount required by subsection 1 of this section.

24 5. In lieu of such a deposit maintained in this state, the
25 director shall accept a certificate or certificates in proper form of
26 the public officer or officers having general supervision of title
27 insurers in its state of domicile to the effect that a deposit or total
28 deposits, in an equal or greater amount, in classes of investment
29 authorized in such state, are being maintained for like purposes in
30 public custody or control pursuant to the laws of such state on
31 behalf of the title insurer.

32 6. If sections 381.011 to 381.241 require a greater amount
33 of capital and surplus or deposits than that required of a title
34 insurer prior to September 28, 1987, such title insurer shall have
35 three years after September 28, 1987, to comply with any such
36 increased requirement.

37 7. The provisions of sections 375.950 to 375.990, RSMo,
38 shall apply to the impairment of capital, liquidation, and
39 rehabilitation of title insurers.]

[381.052. No person other than a domestic, foreign or
2 non-United States title insurer organized on the stock plan and
3 duly licensed by the director shall transact title insurance business
4 as an insurer in this state.]

[381.055. Subject to the exceptions and restrictions
2 contained in this chapter, a title insurer shall have the power to:

- 3 (1) Do only title insurance business;
4 (2) Reinsure title insurance policies; and
5 (3) Perform ancillary activities, unless prohibited by the
6 director, including examining titles to real property and any
7 interest in real property and procuring and furnishing related
8 information and information about relevant personal property,
9 when not in contemplation of, or in conjunction with, the issuance
10 of a title insurance policy.]

[381.058. 1. No insurer that transacts any class, type or

2 kind of business other than title insurance shall be eligible for the
3 issuance or renewal of a license to transact the business of title
4 insurance in this state nor shall title insurance be transacted,
5 underwritten or issued by any insurer transacting or licensed to
6 transact any other class, type or kind of business.

7 2. A title insurer shall not engage in the business of
8 guaranteeing payment of the principal or the interest of bonds or
9 mortgages.

10 3. (1) Notwithstanding subsection 1 of this section, and to
11 the extent such coverage is lawful within this state, a title insurer
12 is expressly authorized to issue closing or settlement protection to
13 a proposed insured upon request if the title insurer issues a
14 commitment, binder or title insurance policy. Such closing or
15 settlement protection shall conform to the terms of coverage and
16 form of instrument as required by the director and may indemnify
17 a proposed insured solely against loss of settlement funds only
18 because of the following acts of a title insurer's named title agency
19 or title agent:

20 (a) Theft of settlement funds; and

21 (b) Failure to comply with written closing instructions by
22 the proposed insured when agreed to by the title agency or title
23 agent relating to title insurance coverage.

24 (2) The director may promulgate or approve a required
25 charge for providing the coverage.

26 (3) A title insurer shall not provide any other coverage
27 which purports to indemnify against improper acts or omissions of
28 a person with regard to escrow, settlement, or closing services.]

[381.061. 1. The net retained liability of a title insurer for
2 a single risk on property located in this state, whether assumed
3 directly or as reinsurance, may not exceed fifty percent of the sum
4 of its total surplus to policyholders and unearned premium reserve,
5 less the admitted asset value assigned to title plants, as shown in
6 the most recent annual statement of the title insurer on file in the
7 office of the director.

8 2. The director may waive the limitation of this section for
9 a particular risk upon application of the title insurer and for good

10 cause shown.]

2 [381.062. Before being licensed to do an insurance business
3 in this state, a title insurer shall establish and maintain a
4 minimum paid-in capital of not less than four hundred thousand
5 dollars and, in addition, paid-in initial surplus of at least four
hundred thousand dollars.]

2 [381.065. 1. The net retained liability of a title insurer for
3 a single risk in regard to property located in this state, whether
4 assumed directly or as reinsurance, shall not exceed the aggregate
5 of fifty percent of surplus as regards policyholders plus the
6 statutory premium reserve less the company's investment in title
7 plants, all as shown in the most recent annual statement of the
insurer on file with the director.

8 2. For purposes of this chapter:

9 (1) A single risk shall be the insured amount of any title
10 insurance policy, except that, where two or more title insurance
11 policies are issued simultaneously covering different estates in the
12 same real property, a single risk shall be the sum of the insured
13 amounts of all the title insurance policies; and

14 (2) A policy under which a claim payment reduces the
15 amount of insurance under one or more other title insurance
16 policies shall be included in computing the single risk sum only to
17 the extent that its amount exceeds the aggregate amount of the
18 policy or policies whose amount of insurance is reduced.

19 3. A title insurer may obtain reinsurance for all or any part
20 of its liability under its title insurance policies or reinsurance
21 agreements and may also reinsure title insurance policies issued
22 by other title insurers on single risks located in this state or
23 elsewhere. Reinsurance on policies issued on properties located in
24 this state may be obtained from any title insurers licensed to
25 transact title insurance business in this state, any other state, or
26 the District of Columbia and which have a combined capital and
27 surplus of at least eight hundred thousand dollars.

28 4. The director may waive the limitation of this section for
29 a particular risk upon application of the title insurer and for good
30 cause shown.]

2 [381.068. In determining the financial condition of a title
3 insurer doing business pursuant to this chapter, the general
4 investment provisions of sections 376.300 to 376.305, RSMo, shall
5 apply; except that, an investment in a title plant or plants in an
6 amount equal to the actual cost shall be allowed as an admitted
7 asset for title insurers. The aggregate amount of the investment
8 shall not exceed fifty percent of surplus to policyholders, as shown
9 on the most recent annual statement of the title insurer on file
10 with the director.]

2 [381.071. 1. No title insurance policy shall be written
3 unless and until the title insurer, title agent, or agency has:

3 (1) Caused a search of title to be made from the evidence
4 prepared from a title plant of the county where the property is
5 located as herein defined, or if no such title plant of the county
6 exists, or the owner of such plant refuses to furnish the title
7 insurer, title agent, or agency desiring to insure, such title evidence
8 at a reasonable charge and within a reasonable period of time, then
9 such policy of title insurance shall be based upon the best title
10 evidence available. An attorney licensed to practice law in this
11 state may upon personal inspection use the best evidence available
12 in any county and is not subject to the provisions of the title plant
13 requirement of sections 381.011 to 381.241. The records on which
14 the title plant is based on shall show all prior matters affecting the
15 title to the property or interest therein for a continuous period of
16 time of at least:

17 (a) The past ten years, by two years after September 28,
18 1987;

19 (b) The past fifteen years, by three years after September
20 28, 1987;

21 (c) The past twenty years, by four years after September 28,
22 1987; and

23 (d) The past twenty-seven years, by five years after
24 September 28, 1987; and

25 (2) Caused to be made a determination of insurability of
26 title in accordance with sound underwriting practices.

27 2. Except when allowed by regulations promulgated by the

director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

3. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent or agency for a period of not less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent or agency may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original.

4. This section shall not apply to:

(1) A title insurer assuming liability through a contract of reinsurance;

(2) A title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with this section; or

(3) Policies of title insurance issued prior to the expiration of one year after September 28, 1987.]

[381.072. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general provisions of the insurance code requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred

16 in the proper disposition of the claim, the title insurer shall
17 determine the amount to be added to the reserve, which amount
18 shall reflect a careful estimate of the loss or loss expense likely to
19 result by reason of the claim;

20 (c) Reserves required pursuant to this section may be
21 revised from time to time and shall be redetermined at least once
22 each year;

23 (2) A statutory or unearned premium reserve established
24 and maintained as follows:

25 (a) A domestic title insurer shall establish and maintain an
26 unearned premium reserve computed in accordance with this
27 section, and all sums attributed to such reserve shall at all times
28 and for all purposes be considered and constitute unearned
29 portions of the original premiums. This reserve shall be reported
30 as a liability of the title insurer in its financial statements;

31 (b) The unearned premium reserve shall be maintained by
32 the title insurer for the protection of holders of title insurance
33 policies. Except as provided in this section, assets equal in value
34 to the reserve are not subject to distribution among creditors or
35 stockholders of the title insurer until all claims of policyholders or
36 claims under reinsurance contracts have been paid in full, and all
37 liability on the policies or reinsurance contracts has been paid in
38 full and discharged or lawfully reinsured;

39 (c) The unearned premium reserve shall consist of:

40 a. The amount of the unearned premium reserve on
41 January 1, 2001; and

42 b. A sum equal to fifteen cents for each one thousand
43 dollars of net retained liability under each title insurance policy,
44 excluding mortgagee's policies simultaneously issued with owner's
45 policies or owner's leasehold policies of the same or greater
46 amount, on a single risk written on properties located in this state
47 and issued after January 1, 2001;

48 (d) Amounts placed in the unearned premium reserve in
49 any year in accordance with paragraph (c) of this subdivision shall
50 be deducted in determining the net profit of the title insurer for
51 that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before January 1, 2001, shall be released in accordance with the law in effect immediately before January 1, 2001;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required pursuant to section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed pursuant to this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) a. Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision;

b. The supplemental reserve required pursuant to this section shall be phased in as follows:

i. Twenty-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the year next following January 1, 2001;

88 ii. Fifty percent of the otherwise applicable supplemental
89 reserve is required until December thirty-first of the second year
90 following January 1, 2001;

91 iii. Seventy-five percent of the otherwise applicable
92 supplemental reserve is required until December thirty-first of the
93 third year following January 1, 2001;

94 iv. One hundred percent of the supplemental reserve is
95 required after December thirty-first of the fourth year following
96 January 1, 2001.]

 [381.075. 1. Sections 375.570 to 375.750, RSMo, and
2 sections 375.1150 to 375.1246, RSMo, shall apply to all title
3 insurers subject to the title insurance act, except as otherwise
4 provided in this section. In applying such sections, the court shall
5 consider the unique aspects of title insurance and shall have broad
6 authority to fashion relief that provides for the maximum
7 protection of the title insurance policyholders.

8 2. Security and escrow funds held by or on behalf of the
9 title insurer shall not become general assets and shall be
10 administered as secured claims as defined in section 375.1152,
11 RSMo.

12 3. Title insurance policies that are in force at the time an
13 order of liquidation is entered shall not be canceled except upon a
14 showing to the court of good cause by the liquidator. The
15 determination of good cause shall be within the discretion of the
16 court. In making this determination, the court shall consider the
17 unique aspects of title insurance and all other relevant
18 circumstances.

19 4. The court may set appropriate dates that potential
20 claimants must file their claims with the liquidator. The court may
21 set different dates for claims based upon the title insurance policy
22 than for all other claims. In setting dates, the court shall consider
23 the unique aspects of title insurance and all other relevant
24 circumstances.

25 5. As of the date of the order of insolvency or liquidation,
26 all premiums paid, due or to become due under policies of the title
27 insurers, shall be fully earned. It shall be the obligation of title

28 agencies, title agents, insureds or representatives of the title
29 insurer to pay fully earned premium to the liquidator or
30 rehabilitator.]

[381.078. A title insurer shall only declare or distribute a
2 dividend to shareholders with the prior written approval of the
3 director, as would be permitted pursuant to subdivision (1) of
4 subsection 1 of section 382.210, RSMo.]

[381.081. 1. A domestic title insurer shall establish and
2 maintain an unearned premium reserve computed in accordance
3 with this section, and all sums attributed to such reserve shall at
4 all times and for all purposes be considered and constitute
5 unearned portions of the original premiums. This reserve shall be
6 reported as a liability of the title insurer in its financial
7 statements.

8 2. The unearned premium reserve shall be maintained by
9 the title insurer for the protection of holders of title insurance
10 policies. Except as provided in this section, assets equal in value
11 to the reserve are not subject to distribution among creditors or
12 stockholders of the title insurer until all claims of policyholders or
13 claims under reinsurance contracts have been paid in full, and all
14 liability on the policies or reinsurance contracts has been paid in
15 full and discharged or lawfully reinsured.

16 3. A foreign or alien title insurer licensed to transact title
17 insurance business in this state shall maintain at least the same
18 reserves on title insurance policies issued on properties located in
19 this state as are required of domestic title insurers, unless the laws
20 of the jurisdiction of domicile of the foreign or alien title insurer
21 require a higher amount.

22 4. The unearned premium reserve shall consist of:

23 (1) The amount of the unearned premium reserve on
24 September 28, 1987; and

25 (2) A sum equal to fifteen cents for each one thousand
26 dollars of net retained liability under each title insurance policy,
27 excluding mortgagee's policies simultaneously issued with owner's
28 policies or owner's leasehold policies of the same or greater
29 amount, on a single risk written on properties located in this state

30 and issued after September 28, 1987.

31 5. Amounts placed in the unearned premium reserve in any
32 year in accordance with subdivision (2) of subsection 4 of this
33 section shall be deducted in determining the net profit of the title
34 insurer for that year.

35 6. A title insurer shall release from the unearned premium
36 reserve a sum equal to ten percent of the amount added to the
37 reserve during a calendar year on July first of each of the five
38 years following the year in which the sum was added, and shall
39 release from the unearned premium reserve a sum equal to three
40 and one-third percent of the amount added to the reserve during
41 that year on each succeeding July first until the entire amount for
42 that year has been released. The amount of the unearned premium
43 reserve or similar unearned premium reserve maintained before
44 September 28, 1987, shall be released in accordance with the law
45 in effect immediately before September 28, 1987.]

[381.085. 1. A title insurer or authorized rate service
2 organization shall not deliver or issue for delivery or permit any of
3 its authorized title agencies or title agents to deliver in this state,
4 any form, in connection with title insurance written, unless it has
5 been filed with the director and approved by the director or thirty
6 days have elapsed and it has not been disapproved as misleading
7 or violative of public policy. Each violation of this subsection is a
8 class C violation as that term is defined in section 381.045.

9 2. Forms covered by this section shall include:

10 (1) Title insurance policies, including standard form
11 endorsements; and

12 (2) Title insurance commitments issued prior to the
13 issuance of a title insurance policy.

14 3. After notice and opportunity to be heard are given to the
15 insurer or rate service organization which submitted a form for
16 approval, the director may withdraw approval of the form on
17 finding that the use of the form is contrary to the legal
18 requirements applicable at the time of withdrawal. The effective
19 date of withdrawal of approval shall not be less than ninety days
20 after notice of withdrawal is given.

21 4. Any term or condition related to an insurance coverage
22 provided by an approved title insurance policy or any exception to
23 the coverage, except those ascertained from a search and
24 examination of records relating to a title or inspection or survey of
25 a property to be insured, may only be included in the policy after
26 the term, condition or exception has been filed with the director
27 and approved as herein provided.]

 [381.088. 1. A title insurer may satisfy its obligation to file
2 premium rates, rating manuals and forms as required by this
3 chapter by becoming a member of, or a subscriber to, a rate service
4 organization, organized and licensed pursuant to the provisions of
5 this chapter, where the organization makes the filings, and by
6 authorizing the director in writing to accept the filings on the
7 insurer's behalf.

8 2. Nothing in this chapter shall be construed as requiring
9 any title insurer, title agency or title agent to become a member of,
10 or a subscriber to, any rate service organization. Nothing in this
11 chapter shall be construed as prohibiting the filing of deviations
12 from rate service organization filings by any member or
13 subscriber.]

 [381.091. 1. If a domestic title insurer becomes insolvent,
2 is in the process of liquidation or dissolution, or is in the
3 possession of the director:

4 (1) Such amount of the assets of such title insurer equal to
5 the unearned premium reserve then remaining may be used by or
6 with the written approval of the director to pay for reinsurance of
7 the liability of such title insurer upon all outstanding title
8 insurance policies or reinsurance agreements to the extent to which
9 claims for losses by the holders thereof are not then pending. The
10 balance of assets, if any, equal to the unearned premium reserve,
11 may then be transferred to the general assets of the title insurer;

12 (2) The net assets of the unearned premium reserve shall
13 be available to pay claims for losses sustained by holders of title
14 insurance policies then pending or arising up to the time
15 reinsurance is effected. If claims for losses exceed such other
16 assets of the title insurer, such claims, when established, shall be

17 paid pro rata out of the surplus assets attributable to the unearned
18 premium reserve to the extent of such surplus, if any.

19 2. If reinsurance is not obtained, assets equal to the
20 unearned premium reserve and assets constituting minimum
21 capital, or so much as remains thereof after outstanding claims
22 have been paid, shall constitute a trust fund to be held and
23 invested by the director for twenty years, out of which claims of
24 policyholders shall be paid as they arise. The balance, if any, of
25 the trust fund shall, at the expiration of twenty years, revert to the
26 general assets of the title insurer.]

 [381.092. 1. Every title insurer that shall propose its own
2 premium rates and every title insurance rating organization shall
3 propose premium rates that are not excessive nor inadequate for
4 the safety and soundness of any title insurer, which do not unfairly
5 discriminate between risks in this state which involve essentially
6 the same exposure to loss and expense elements, and which shall
7 give due consideration to the following matters:

8 (1) The desirability for stability and responsiveness of rate
9 structures;

10 (2) The necessity of assuring the financial solvency of title
11 insurance companies in periods of economic depression;

12 (3) The necessity for paying dividends on the capital stock
13 of title insurance companies sufficient to induce capital to be
14 invested therein; and

15 (4) A reasonable level of profit for the insurer.

16 2. Every title insurer that shall propose its own rates and
17 every title insurance rating organization may adopt basic
18 classifications of policies or contracts of title insurance which shall
19 be used as the basis for rates.]

 [381.095. 1. If the director shall find in his review of rate
2 filings that the filings provide for, result in, or produce rates that
3 are not unreasonably high, and are not inadequate for the safeness
4 and soundness of the insurer, and are not unfairly discriminatory
5 between risks in this state involving essentially the same hazards
6 and expense elements, the director shall approve such rates. Prior
7 to such approval the director may conduct a public hearing with

8 respect to a rate filing. An approval shall continue in effect until
9 the director shall issue an order of disapproval pursuant to the
10 requirements and procedure provided for in subsections 2 and 3 of
11 this section.

12 2. Upon the review at any time by the director of a rate
13 filing, the director shall, before issuing an order of disapproval,
14 hold a hearing upon not less than ten days' written notice,
15 specifying in reasonable detail the matters to be considered at such
16 hearing, to every title insurer and title insurance rating
17 organization which made such filing, and if, after such hearing, the
18 director finds that such filing or a part thereof does not meet the
19 requirements of this chapter, the director shall issue an order
20 specifying in what respects the director finds that it so fails, and
21 stating when, within a reasonable period thereafter, such filing or
22 a part thereof shall be deemed no longer effective. A title insurer
23 or title insurance rating organization shall have the right at any
24 time to withdraw a filing or a part thereof, subject to the provisions
25 of section 381.102, in the case of deviation filing. Copies of the
26 order shall be sent to every title insurer and title insurance rating
27 organization affected. The order shall not affect any contract or
28 policy made or issued prior to the expiration of the period set forth
29 in the order.

30 3. Any person or organization aggrieved with respect to any
31 filing which is in effect may make written application to the
32 director for a hearing thereon. The title insurance company or title
33 insurance rating organization that made the filing shall not be
34 authorized to proceed pursuant to this subsection. Such
35 application shall specify in reasonable detail the grounds to be
36 relied upon by the applicant. If the director shall find that the
37 application is made in good faith, that the applicant would be so
38 aggrieved if his or her grounds are established, and that such
39 grounds otherwise justify holding such a hearing, the director
40 shall, within thirty days after receipt of such application, hold a
41 hearing upon not less than ten days' written notice to the applicant
42 and to every title insurance company and title insurance rating
43 organization which made such a filing. If, after such hearing, the

44 director finds that the filing or a part thereof does not meet the
45 requirements of this chapter, the director shall issue an order
46 specifying in what respects the director finds that such filing or a
47 part thereof fails to meet the requirements of this chapter, stating
48 when within a reasonable period thereafter, such filing or a part
49 thereof shall be deemed no longer effective. Copies of such order
50 shall be sent to the applicant and to every such title insurer and
51 title insurance rating organization. The order shall not affect any
52 contract or policy made or issued prior to the expiration of the
53 period set forth in the order.]

[381.098. 1. A corporation, an unincorporated association,
2 a partnership or an individual, whether located within or outside
3 this state, may make application to the director for license as a
4 rating organization for title insurers, and shall file therewith:

5 (1) A copy of its constitution, its articles of agreement or
6 association or its certificate of incorporation, and of its bylaws,
7 rules and regulations governing the conduct of its business;

8 (2) A list of its members and subscribers;

9 (3) The name and address of a resident of this state upon
10 whom notices or orders of the director or process affecting such
11 rating organization may be served; and

12 (4) A statement of its qualifications as a title insurance
13 rating organization.

14 2. If the director finds that the applicant is competent,
15 trustworthy and otherwise qualified to act as a rating organization,
16 and that its constitution, articles of agreement or association or
17 certificate of incorporation, and its bylaws, rules and regulations
18 governing the conduct of its business, conform to requirements of
19 law, the director shall issue a license authorizing the applicant to
20 act as a rating organization for title insurance. Licenses issued
21 pursuant to this section shall remain in effect for three years
22 unless sooner suspended or revoked by the director or withdrawn
23 by the licensee. The fee for such license shall be one thousand five
24 hundred dollars. Licenses issued pursuant to this section may be
25 suspended or revoked by the director, after hearing upon notice, in
26 the event the rating organization ceases to meet the requirements

27 of this subsection. Every rating organization shall notify the
28 director promptly of every change in:

29 (1) Its constitution, its articles of agreement or association
30 or its certificate of incorporation, and its bylaws, rules and
31 regulations governing the conduct of its business;

32 (2) Its list of members and subscribers; and

33 (3) The name and address of the resident of this state
34 designated by it upon whom notices or orders of the director or
35 process affecting such rating organization may be served.

36 3. Subject to rules and regulations which have been
37 approved by the director as reasonable, each title insurance rating
38 organization shall permit any title insurance company not a
39 member to be a subscriber to its rating services. Notices of
40 proposed changes in such rules and regulations shall be given to
41 subscribers. Each such rating organization shall furnish its rating
42 services without discrimination to its members and
43 subscribers. The reasonableness of any rule or regulation in its
44 application to subscribers, or the refusal of any such rating
45 organization to admit a title insurance company as a subscriber,
46 shall at the request of any subscriber or any such title insurance
47 company, be reviewed by the director at a hearing held upon at
48 least ten days' written notice to such rating organization and to
49 such subscriber. If the director finds that such rule or regulation
50 is unreasonable in its application to subscribers, the director shall
51 order that such rule or regulation shall not be applicable to
52 subscribers. If the rating organization fails to grant or reject an
53 application of a title insurance company for subscribership within
54 thirty days after it was made, the title insurance company may
55 request a review by the director as if the application had been
56 rejected. If the director finds that the title insurance company has
57 been refused admittance to the title insurance rating organization
58 as a subscriber without justification, the director shall order such
59 rating organization to admit the title insurance company as a
60 subscriber. If the director finds that the action of the title
61 insurance rating organization was justified, the director shall make
62 an order affirming its action.]

1 [381.101. 1. All title insurers licensed in this state shall
2 establish and maintain reserves against unpaid losses and loss
3 expenses.

4 2. Upon receiving notice from or on behalf of the insured of
5 a title defect in or lien or adverse claim against the title of the
6 insured that may result in a loss or cause expense to be incurred
7 in the proper disposition of the claim, the title insurer shall
8 determine the amount to be added to the reserve, which amount
9 shall reflect a careful estimate of the loss or loss expense likely to
10 result by reason of the claim.

11 3. Reserves required under this section may be revised from
12 time to time and shall be redetermined at least once each year.]

[381.102. Every member of or subscriber to a title insurance
2 rating organization shall adhere to the filings made on its behalf
3 by such organization, except that any title insurance company
4 which is a member of or subscriber to such a rating organization
5 may file with the director a uniform percentage of decrease or
6 increase to be applied to any or all elements of the fees produced
7 by the rating system so filed for a class of title insurance which is
8 found by the director to be a proper rating unit for the application
9 of such uniform decrease or increase, or to be applied to the rates
10 for a particular area, or otherwise deviate from the rating plans,
11 policy forms or other matters which are the subject of filings
12 pursuant to this chapter. Such deviation filing shall specify the
13 basis for the modification and shall be accompanied by the data or
14 historical pattern upon which the applicant relies. A copy of the
15 deviation filing and data shall be sent simultaneously to such
16 rating organization. Deviation filings shall be subject to the
17 provisions of section 381.095.]

[381.105. 1. Any member of or subscriber to a title
2 insurance rating organization may appeal to the director from any
3 action or decision of such rating organization in approving or
4 rejecting any proposed change in or addition to the filings of such
5 rating organization, and the director shall, after a hearing held
6 upon not less than ten days' written notice to the appellant and to
7 such rating organization, issue an order approving the action or

8 decision of such rating organization or directing it to give further
9 consideration to such proposal and to take action or make a
10 decision upon it within thirty days. If such appeal is from the
11 action or decision of the title insurance rating organization in
12 rejecting a proposed addition to its filings, the director may, in the
13 event the director finds that such action or decision was
14 unreasonable, issue an order directing the rating organization to
15 make an addition to its filings, on behalf of its members and
16 subscribers, in a manner consistent with the director's findings,
17 within a reasonable time after the issuance of such order. If the
18 appeal is from the action of the title insurance rating organization
19 with regard to a rate or a proposed change in or addition to its
20 filings relating to the character and extent of coverage, the director
21 shall approve the action of the rating organization or such
22 modification thereof as shall have been suggested by the appellant
23 if either be made in accordance with this chapter.

24 2. The failure of a title insurance rating organization to
25 take action or make a decision within thirty days after submission
26 to it of a proposal pursuant to this section shall constitute a
27 rejection of such proposal within the meaning of this section. If
28 such appeal is based upon the failure of the rating organization to
29 make a filing on behalf of such member or subscriber which is
30 based on a system of expense allocation which differs from the
31 system of expense allocation included in a filing made by such
32 rating organization, the director shall, if the director grants the
33 appeal, order the rating organization to make the requested filing
34 for use by the appellant. In deciding such appeal, the director
35 shall apply the standards set forth in section 381.032.]

2 [381.108. 1. The director shall promulgate reasonable rules
3 and statistical plans, reasonably adapted to each of the rating
4 systems on file with the department, which may be modified from
5 time to time, and which shall be used thereafter by each title
6 insurer in the recording and reporting of the composition of its
7 business, its loss and countrywide expense experience and those of
8 its title insurance underwriters in order that the experience of all
title insurers may be made available, at least annually, in such

9 form and detail as may be necessary to aid him or her in
10 determining whether rating systems comply with the standards set
11 forth in this chapter. Such rules and plans may also provide for
12 the recording of expense experience items which are specially
13 applicable to this state and are not susceptible of determination by
14 a prorating of countrywide expense experience. In promulgating
15 such rules and plans, the director shall give due consideration to
16 the rating systems on file with the department, and in order that
17 such rules and plans may be as uniform as is practicable among
18 the several states, to the rules and to the form of the plans used for
19 such rating systems in other states. Such rules and plans shall not
20 place an unreasonable burden of expense on any title insurer. No
21 title insurer shall be required to record or report its expense and
22 loss experience on a classification basis that is inconsistent with
23 the rating system filed by it, nor shall any title insurer be required
24 to report the experience to any agency of which it is not a member
25 or subscriber. The director may designate one or more rating
26 organizations or other agencies to assist the director in gathering
27 such experience and making compilations thereof, and such
28 compilations shall be made available, subject to reasonable rules
29 promulgated by the director, to title insurers and rating
30 organizations. The director shall give preference in such
31 designation to entities organized by and functioning on behalf of
32 title insurers operating in this state. If the director, in his or her
33 judgment, determines that one or more of such organizations
34 designated as statistical agents is unable or unwilling to perform
35 its statistical functions according to reasonable requirements
36 established from time to time by the director, he or she may, after
37 consultation with such statistical agent and upon twenty days'
38 notice to any affected companies, designate another person to act
39 on the director's behalf in the gathering of statistical
40 experience. The director shall in such case establish the fee to be
41 paid to such designated person by the affected companies in order
42 to pay the total cost of gathering and compiling such
43 experience. Agencies designated by the director shall assist the
44 director in making compilations of the reported data and such

45 compilations shall be made available, subject to reasonable rules
46 and regulations promulgated by the director, to insurers, rating
47 organizations and any other interested parties.

48 2. Reasonable rules and plans may be promulgated by the
49 director for the interchange of data necessary for the application of
50 rating plans.

51 3. In order to further uniform administration of rate
52 regulatory laws, the director and every title insurer and rating
53 organization may exchange information and experience data with
54 insurance supervisory officials, title insurers and rating
55 organizations in other states, and may consult with them with
56 respect to rate making and the application of rating systems.

57 4. No rule or portion of a rule promulgated pursuant to the
58 authority of this section shall become effective unless it has been
59 promulgated pursuant to the provisions of chapter 536, RSMo.]

[381.111. A title insurer may obtain reinsurance for all or
2 any part of its liability under its title insurance policies or
3 reinsurance agreements and may also reinsure title insurance
4 policies issued by other title insurers on single risks located in this
5 state or elsewhere. Reinsurance on policies issued on properties
6 located in this state may be obtained from any title insurers
7 licensed to transact title insurance business in this state, any other
8 state, or the District of Columbia and which have a combined
9 capital and surplus of at least eight hundred thousand dollars.]

[381.112. For purposes of the premium tax imposed by
2 sections 148.320 and 148.340, RSMo, the premium income received
3 by a title insurer shall mean the amount of premium actually
4 remitted to the title insurer and shall exclude any amount of
5 premium retained by the title agent within the definition of
6 "premium" contained in section 381.009.]

[381.115. 1. A person shall not act in the capacity of a title
2 agency or title agent and a title insurer may not contract with any
3 person to act in the capacity of a title agency or title agent with
4 respect to risks located in this state unless the person is a licensed
5 title agency or title agent in this state.

6 2. An individual employed by a licensed title agency or title

agent to whom the agency or agent delegates authority to act on that agency's or agent's behalf shall be either individually licensed or be named on the employing agent's license if such employee performs any of the functions defined in paragraph (a) of subdivision (25) of section 381.009. Each person named on the license shall possess all qualifications determined by the director to be appropriate. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of either, and persons acting on behalf of title agencies or title agents. This subsection is not intended to include persons performing clerical functions.

3. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

4. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

5. If the title agency or title agent delegates the title search to a third party, such as an abstract company, the agency or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the agency or agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period. Each violation of this subsection is a class C violation as that term is defined in section 381.045.]

[381.118. 1. Each title agent licensed to sell title insurance in this state, unless exempt pursuant to subsection 8 of this

3 section, shall successfully complete courses of study as required by
4 this section. Any person licensed to act as a title agent shall,
5 during each two years, attend courses or programs of instruction or
6 attend seminars equivalent to a minimum of eight hours of
7 instruction. The initial such two-year period shall begin January
8 first of the year next following the effective date of this chapter.

9 2. Subject to approval by the director, the courses or
10 programs of instruction which shall be deemed to meet the
11 director's standards for continuing educational requirements shall
12 include, but not be limited to, the following:

13 (1) An insurance-related course taught by an accredited
14 college or university or qualified instructor who has taught a
15 course of insurance law at such institution;

16 (2) A course or program of instruction or seminar developed
17 or sponsored by any authorized insurer, recognized agents'
18 association or insurance trade association. A local agents' group
19 may also be approved if the instructor receives no compensation for
20 services;

21 (3) Courses approved for continuing legal education credit
22 by the Missouri Bar.

23 3. A person teaching any approved course of instruction or
24 lecturing at any approved seminar shall qualify for the same
25 number of classroom hours as would be granted to a person taking
26 and successfully completing such course, seminar or program.

27 4. Excess classroom hours accumulated during any two-year
28 period may be carried forward to the two-year period immediately
29 following the two- year period in which the course, program or
30 seminar was held.

31 5. For good cause shown, the director may grant an
32 extension of time during which the educational requirements
33 imposed by this section may be completed, but such extension of
34 time shall not exceed the period of one calendar year. The director
35 may grant an individual waiver of the mandatory continuing
36 education requirement upon a showing by the licensee that it is not
37 feasible for the licensee to satisfy the requirements prior to the
38 renewal date. Waivers may be granted for reasons including, but

39 not limited to:

- 40 (1) Serious physical injury or illness;
- 41 (2) Active duty in the armed services for an extended period
- 42 of time;
- 43 (3) Residence outside the United States; or
- 44 (4) Licensee is at least seventy years of age and is currently
- 45 licensed as a title agent.

46 6. Every person subject to the provisions of this section

47 shall furnish in a form satisfactory to the director, written

48 certification as to the courses, programs, or seminars of instruction

49 taken and successfully completed by such person. A filing fee shall

50 be paid by the person furnishing the report as determined by the

51 director to be necessary to cover the administrative cost related to

52 the handling of such certification reports, subject to the limitations

53 imposed in subsection 9 of this section.

54 7. The provisions of this section shall not apply to those

55 natural persons holding or applying for a license to act as a title

56 agent in Missouri who reside in a state that has enacted and

57 implemented a mandatory continuing education law or regulation

58 pertaining to title agents. However, those natural persons holding

59 or applying for a Missouri agent license who reside in states which

60 have no mandatory continuing education law or regulations shall

61 be subject to all the provisions of this section to the same extent as

62 resident Missouri title agents.

63 8. Rules necessary to implement and administer this

64 section shall be promulgated by the director of the department of

65 insurance, including, but not limited to, rules regarding the

66 following:

67 (1) The insurance advisory board established by section

68 375.019, RSMo, shall be utilized by the director to assist the

69 director in determining acceptable content of courses, programs and

70 seminars to include classroom equivalency;

71 (2) Every applicant seeking approval by the director of a

72 continuing education course pursuant to this section shall pay to

73 the director a filing fee of fifty dollars per course, except that such

74 total fee shall not exceed two hundred fifty dollars per year for any

single applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval;

(3) The director has the authority to determine the amount of the filing fee to be paid by title agents at the time of license renewal, which shall be set at an amount to produce revenue which shall not substantially exceed the cost of administering this section, but in no event shall such fee exceed ten dollars per biennial report filed.

9. All funds received pursuant to the provisions of this section shall be transmitted by the director of the department of insurance to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the department of insurance dedicated fund by the legislature.

10. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification and filing fee required by this section.

11. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.]

[381.121. 1. The deposit required by section 381.051 and the capital, surplus and unearned premium reserve of domestic title insurers shall be held in either cash or investments now or hereafter permitted to domestic life insurers with regard to their capital, reserve and surplus for reserve deposit.

2. A domestic title insurer may invest in title plants. For purposes of determining the financial condition of such title insurer, title plants will be treated as an asset valued at actual cost to the title insurer, not to exceed fifty percent of the surplus as to policyholders as shown on the most recent annual statement of the title insurer.

12 3. Any investment of a domestic title insurer acquired
13 before September 28, 1987, and which under such sections, would
14 be considered ineligible as an investment on that date, shall be
15 disposed of within five years of September 28, 1987. The director,
16 upon application and proof that forced sale of any such investment
17 would be contrary to the best interests of the title insurer or its
18 policyholders, may extend the period for disposal of the investment
19 for a reasonable time.]

 [381.122. The director may during normal business hours
2 examine, audit and inspect any and all books and records
3 maintained by a title agency pursuant to this chapter.]

 [381.125. 1. Whenever the business to be written
2 constitutes affiliated business, prior to commencing the
3 transaction, the title agency or title agent shall ensure that its
4 customer has been provided with disclosure of the existence of the
5 affiliated business arrangement and a written estimate of the
6 charge or range of charges generally made for the title services
7 provided by the title agency or agent.

8 2. The director may establish rules for use by all title
9 agencies in the recording and reporting of the agency's owners and
10 of the agency's ownership interests in other persons or businesses
11 and of material transactions between the parties.

12 3. The director may require each title agency to file on
13 forms prescribed by the director reports setting forth the names
14 and addresses of those persons, if any, that have a financial
15 interest in the agency and who the agency knows or has reason to
16 believe are producers of title insurance business or associates of
17 producers.

18 4. Nothing in this chapter shall be construed as prohibiting
19 affiliated business arrangements in the provision of title insurance
20 business so long as:

21 (1) The title agency, title agent or party making a referral
22 constituting affiliated business, at or prior to the time of the
23 referral, discloses the arrangement and, in connection with the
24 referral, provides the person being referred with a written estimate
25 of the charge or range of charges likely to be assessed and

26 otherwise complies with the disclosure obligations of this section;

27 (2) The person being referred is not required to use a
28 specified title insurance agency, agent or insurer; and

29 (3) The only thing of value that is received by the title
30 agency, title agent or party making the referral, other than
31 payments otherwise permitted, is a return on an ownership
32 interest.

33 For purposes of this subsection, the terms "required use" and
34 "return on an ownership interest" shall have the meaning accorded
35 to them under the Real Estate Settlement Procedures Act (RESPA),
36 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR
37 Section 3500, et seq.

38 5. Each violation of any provision of this section is a class
39 C violation as that term is defined in section 381.045.]

[381.131. Any person who shall be appointed or who shall
2 act as title insurance agent or agency for any title insurance
3 company within this state, or who shall, as title insurance agent or
4 agency, solicit applications, deliver policies and collect premiums
5 thereon, or who shall receive or collect moneys from any source or
6 on any account whatsoever, as agent or agency, for a title insurance
7 company doing business in this state, shall be held responsible in
8 a trust or fiduciary capacity to the company for any money so
9 collected or received by him for such company.]

[381.141. 1. No title insurer or title agent or agency shall:

2 (1) Pay, directly or indirectly, to the insured or to any other
3 person any commission, any part of its premiums, fees, or other
4 charges; or any other consideration as inducement or compensation
5 for the referral of title business or for performance of any escrow
6 or other service by the title agent or agency; or

7 (2) Issue any title insurance policy or perform any service
8 in connection with any transaction in which it has paid or intends
9 to pay any commission, rebate or inducement which it knows to be
10 in violation of this section.

11 2. Nothing in this section shall be construed as prohibiting
12 reasonable payments, other than for the referral of title insurance
13 business, for services actually rendered to either a title insurer or

14 a title agent or agency in connection with title insurance business.

15 3. Nothing in sections 381.011 to 381.241 shall prohibit any
16 producer or any associate of a producer from referring title
17 business to any title insurer or title insurance agent or agency of
18 his, her or its choice, and if such producer or associate producer
19 has any financial, franchise, or ownership interest in the title
20 insurer, the title insurance agent or agency, from financial,
21 franchise or ownership interest so long as the purchaser is made
22 aware in writing of the relationship between the producer or
23 associate producer and the title agent or agency.]

[381.151. Nothing in sections 381.011 to 381.241 shall be
2 construed as prohibiting the division of premiums and charges
3 between or among a title insurer and its title agent or agency, two
4 or more title insurers, one or more title insurers and one or more
5 title agents or agencies or two or more title agents or agencies,
6 provided such division of premiums and charges does not
7 constitute:

8 (1) An unlawful rebate or inducement under the provisions
9 of sections 381.011 to 381.241; or

10 (2) Payment of a forwarding fee or finder's fee.]

[381.161. 1. No producer or other person, except the person
2 paying the premium for the title insurance, shall require, directly
3 or indirectly, or through any trustee, director, officer, agent,
4 employee, or affiliate, as a condition, agreement, or understanding
5 to selling or furnishing any other person any loan, or extension
6 thereof, credit, sale, property, contract, lease or service, that such
7 other person shall place, any contract of title insurance of any kind
8 through any particular title agent, agency, or title insurer. No title
9 agent, agency, or title insurer shall knowingly participate in any
10 such prohibited plan or transaction. No person shall fix a price
11 charged for such thing or service, or discount from or rebate upon
12 price, on the condition, agreement, or understanding that any title
13 insurance is to be obtained through a particular agent, agency, or
14 title insurer.

15 2. Any person who violates the provisions of this section, or
16 any title insurer, title agent, or agency who accepts an order for

17 title insurance knowing that it is in violation of the provision of
18 this section shall, in addition to any other action which may be
19 taken by the director, be subject to a fine in an amount equal to
20 five times the premium for the title insurance.]

[381.171. 1. Premiums shall not be inadequate, excessive
2 or unfairly discriminatory.

3 2. Premiums are excessive if, in the aggregate, they are
4 likely to produce a long run profit that is unreasonably high in
5 relation to the riskiness of the business or if expenses are
6 unreasonably high in relation to the services rendered.

7 3. Premiums are inadequate if they are clearly insufficient,
8 together with investment income attributable to them, to sustain
9 projected losses and expenses or if continued use of such premiums
10 will have the effect of substantially lessening competition or the
11 effect of tending to create a monopoly.

12 4. Premiums are unfairly discriminatory if the premium
13 charged for a policy of any particular face amount of liability is
14 higher than the premium for an indential policy within the same
15 classification where such policy has a like face amount or a higher
16 face amount of liability. Premiums within each premium
17 classification may, in the discretion of the title insurer, to a
18 reasonable degree be less than the expenses incurred and the risks
19 assumed in the case of policies of lower face amount of liability and
20 the excess may be charged against policies of higher face amount
21 of liability without rendering the premiums unfairly
22 discriminatory.

23 5. Premiums may be grouped by classifications into the
24 various types of title policies and endorsements offered. The
25 classifications may be further divided to produce premiums for
26 individual risks or services within a classification. Those
27 classifications or further divisions may be established based upon
28 any one or more of the following:

29 (1) The size of a transaction and its effect upon the
30 continuing solvency of the title insurer using the rate in question
31 if a loss should occur;

32 (2) Expense elements, including management time that

33 would ordinarily be expended in a typical transaction of a
34 particular size;

35 (3) The geographic location of a transaction, including
36 variation in risk and expense elements attributable thereto;

37 (4) The individual experience of the insurer and title
38 insurance agent or agency using the rate in question; and

39 (5) Any other reasonable considerations which may include
40 but not be limited to builder/developer quantity discounts and
41 multiple policy discounts on an individual parcel of
42 property. Those classifications or further divisions thereof shall
43 apply to all risks and services in the business of title insurance
44 under the same or under substantially the same circumstances or
45 conditions.

46 6. In making or reviewing premiums due consideration
47 shall be given to past and prospective loss experience, to exposure
48 to loss, to underwriting practice and judgment, to past and
49 prospective expenses including amounts paid to or retained by title
50 agents or agencies, to a reasonable margin for profit and
51 contingencies taking into account the need for a reasonable return
52 on capital committed to the enterprise, and to all other relevant
53 factors both within and outside of this state.

54 7. The director may promulgate rules or regulations setting
55 forth guidelines for the evaluation of premiums. Such regulations
56 may include consideration of:

- 57 (1) Cost of underwriting risks assumed by the insurer;
58 (2) Amounts paid to or retained by title agents;
59 (3) Operating expenses of the insurer other than
60 underwriting and claims expense;
61 (4) Payment of claims and claim related expenses;
62 (5) Investment income;
63 (6) Reasonable profit;
64 (7) Premium taxes; and
65 (8) Any other factors the director deems relevant.]

2 [381.181. 1. Every title insurer shall file with the director
3 its premium schedules it proposes to use in any county of this
state. Every filing shall set forth its effective date, which shall not

4 be earlier than the thirtieth day following its receipt by the
5 director, and shall indicate the character and extent of the
6 coverages and services contemplated. Filings that the director has
7 not disapproved within thirty days of filing shall be deemed
8 effective.

9 2. No title insurer or title agent or agency may use or
10 collect any premium after September 28, 1987, except in accordance
11 with the premium schedules filed with the director as required by
12 subsections 1 and 2 of this section. The director may provide by
13 regulation for interim use of premium schedules in effect prior to
14 September 28, 1987.

15 3. Every title insurer shall establish basic classifications of
16 coverages to be used as the basis for determining premiums.]

[381.191. In order to further uniform administration of rate
2 regulatory laws, the director and every title insurer, title agent, or
3 agency in the state may exchange information and experience data
4 with insurance supervisory officials of this and other states and
5 rating organizations in other states and may consult with them
6 with respect to such information and data.]

[381.201. 1. No title insurer, title agent, or agency shall
2 use any premium in the business of title insurance prior to its
3 effective date nor prior to the filing with respect to such premium
4 having been publicly displayed and made readily available to the
5 public for a period of not less than thirty days in each office of the
6 title insurer, title agent, or agency in the county to which such
7 rates apply, and no premium increase shall apply to title policies
8 which have been contracted for prior to such effective date.

9 2. Premium charges in excess of those set forth in a
10 premium filing which has become effective may be made when such
11 filing includes a statement that such premiums may be made in the
12 event unusual insurance risks are assumed or unusual services
13 performed in the transaction of the business of title insurance,
14 provided that such premiums are reasonably commensurate with
15 the risks assumed for the costs of the services performed.

16 3. Copies of the schedules of premiums which are required
17 to be filed with the director under the provisions of sections

18 381.011 to 381.241, showing their effective date or dates, shall be
19 kept at all times available to the public and prominently displayed
20 in a public place in each office of a title insurer, title agent, or
21 agency in the county to which such rates apply while such rates are
22 effective.]

[381.211. Every title insurer shall file with the director
2 copies of the following forms it proposes to use in this state,
3 including:

- 4 (1) Title insurance policies;
- 5 (2) Standard form endorsements; and
- 6 (3) Preliminary reports, commitments, binders, or any other
7 reports issued prior to the issuance of a title insurance policy.]

[381.221. For purposes of the premium tax imposed by
2 sections 148.320 and 148.340, RSMo, the premium income received
3 by a title insurer shall be one hundred percent of the amounts paid
4 by or on behalf of the insured as "premiums" within the definition
5 of that term contained in sections 381.011 to 381.241.]

[381.231. In addition to any other powers granted under
2 sections 381.011 to 381.241, the director may adopt rules or
3 regulations to protect the interests of the public including, but not
4 limited to, regulations governing sales practices, escrow, collection,
5 settlement, closing procedures, policy coverage standards, rebates
6 and inducements, controlled business, the approval of agency
7 contracts, unfair trade practices and fraud, statistical plans for
8 data collection, consumer education, any other consumer matters,
9 the business of title insurance, or any regulations otherwise
10 implementing or interpreting the provisions of sections 381.011 to
11 381.241. No rule or portion of a rule promulgated under the
12 authority of this chapter shall become effective unless it has been
13 promulgated pursuant to the provisions of section 536.024, RSMo.]

[381.241. 1. The director of insurance or his duly
2 authorized representative may at any time and from time to time,
3 inspect and examine the records, books and accounts of any title
4 insurer, and may require such periodic and special reports from
5 any title insurer, as may be reasonably necessary to enable the
6 director to satisfy himself that such title insurer is complying with

7 the requirements of sections 381.011 to 381.241. No person shall
8 be authorized to inspect and examine the records, books and
9 accounts of any title insurer unless such person has five years
10 experience in the title insurance business. It shall be the duty of
11 the director at least once every four years to make or cause to be
12 made an examination of every title insurer. The reasonable
13 expense of any examination shall be paid by the title insurer.

14 2. The purpose of such examination is to enable the director
15 to ascertain whether there is compliance with the provisions of
16 sections 381.011 to 381.241. If as a result of such examination the
17 director has reason to believe that any rate, rating plan or rating
18 system made or used by an insurer does not meet the standards
19 and provisions of sections 381.011 to 381.241, applicable to it, the
20 director may hold a public hearing. Within a reasonable period of
21 time, which shall be not less than ten days before the date of such
22 hearing, he shall mail written notice specifying the matters to be
23 considered at such hearing to every person, insurer or organization
24 believed by him not to be in compliance with the provisions of
25 sections 381.011 to 381.241.

26 3. If the director, after such hearing, for good cause finds
27 that such rate, rating plan or rating system does not meet the
28 provisions of sections 381.011 to 381.241, he shall issue an order
29 specifying in what respects any such rate, rating plan or rating
30 system fails to meet such provisions, and stating when, within a
31 reasonable period of time, the further use of such rate, rating plan
32 or rating system by the title insurer which is the subject of the
33 examination shall be prohibited. A copy of such order shall be sent
34 to such title insurer.]

[381.410. As used in sections 381.410 and 381.412, the
2 following terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on
4 the financial institution, which is signed only by an officer or
5 employee of such institution, is a direct obligation of such
6 institution, and is provided to a customer of such institution or
7 acquired from such institution for remittance purposes;

8 (2) "Certified funds", U.S. currency, funds conveyed by a

9 cashier's check, certified check, teller's check, as defined in Federal
10 Reserve Regulations CC, or wire transfers, including written advice
11 from a financial institution that collected funds have been credited
12 to the settlement agent's account;

13 (3) "Director", the director of the department of insurance,
14 unless the settlement agent's primary regulator is another division
15 in the department of economic development. When the settlement
16 agent is regulated by such division, that division shall have
17 jurisdiction over sections 381.410 and 381.412;

18 (4) "Financial institution":

19 (a) A person or entity doing business under the laws of this
20 state or the United States relating to banks, trust companies,
21 savings and loan associations, credit unions, commercial and
22 consumer finance companies, industrial loan companies, insurance
23 companies, small business investment corporations licensed
24 pursuant to the Small Business Investment Act of 1958 (15 U.S.C.
25 Section 661, et seq.), as amended, or real estate investment trusts
26 as defined in 26 U.S.C. Section 856, as amended, or institutions
27 constituting the Farm Credit System pursuant to the Farm Credit
28 Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended, or any
29 person which services loans secured by liens or mortgages on real
30 property, which person may or may not maintain a servicing
31 portfolio for such loans; or

32 (b) The following persons or entities if their principal place
33 of business is in Missouri or a state which is contiguous to
34 Missouri:

35 a. A mortgage loan company which is subject to licensing,
36 supervision or auditing by the Federal National Mortgage
37 Association, or the Federal Home Loan Mortgage Corporation, or
38 the United States Veterans Administration, or the Government
39 National Mortgage Association, or the United States Department
40 of Housing and Urban Development, or a successor of any of the
41 foregoing agencies or entities, as an approved seller or servicer; or

42 b. A person or entity acting as a mortgage loan company
43 pursuant to court order;

44 (5) "Settlement agent", a person, corporation, partnership,

45 or other business organization which accepts funds and documents
46 as fiduciary for the buyer, seller or lender for the purposes of
47 closing a sale of an interest in real estate located within the state
48 of Missouri, and is not a financial institution, or a member in good
49 standing of the Missouri Bar Association, or a person licensed
50 under chapter 339, RSMo.]

[381.410. As used in this section and section 381.412, the
2 following terms mean:

3 (1) "Cashier's check", a check, however labeled, drawn on
4 the financial institution, which is signed only by an officer or
5 employee of such institution, is a direct obligation of such
6 institution, and is provided to a customer of such institution or
7 acquired from such institution for remittance purposes;

8 (2) "Certified funds", United States currency, funds
9 conveyed by a cashier's check, certified check, teller's check, as
10 defined in Federal Reserve Regulations CC, or wire transfers,
11 including written advice from a financial institution that collected
12 funds have been credited to the settlement agent's account;

13 (3) "Director", the director of the department of insurance,
14 unless the settlement agent's primary regulator is another division
15 in the department of economic development. When the settlement
16 agent is regulated by such division, that division shall have
17 jurisdiction over this section and section 381.412;

18 (4) "Financial institution":

19 (a) A person or entity doing business pursuant to the laws
20 of this state or the United States relating to banks, trust
21 companies, savings and loan associations or credit unions; or

22 (b) The following persons or entities if their principal place
23 of business is in Missouri or outside Missouri, but within the St.
24 Louis or Kansas City standard metropolitan statistical area:

25 a. A mortgage loan company which is subject to licensing,
26 supervision or auditing by the Federal National Mortgage
27 Association, or the Federal Home Loan Mortgage Corporation, or
28 the United States Veterans Administration, or the Government
29 National Mortgage Association, or the United States Department
30 of Housing and Urban Development, or a successor of any of the

31 foregoing agencies or entities, as an approved seller or servicer;
32 (5) "Settlement agent", a person, corporation, partnership,
33 or other business organization which accepts funds and documents
34 as fiduciary for the buyer, seller or lender for the purposes of
35 closing a sale of an interest in real estate located within the state
36 of Missouri, and is not a financial institution, or a member in good
37 standing of the Missouri Bar , or a person licensed under chapter
38 339, RSMo.]

 [381.412. 1. A settlement agent who accepts funds of more
2 than ten thousand dollars, but less than two million dollars, for
3 closing a sale of an interest in real estate shall require a buyer,
4 seller or lender who is not a financial institution to convey such
5 funds to the settlement agent as certified funds. The settlement
6 agent shall record all security instruments for such real estate
7 closing within three business days of such closing after receipt of
8 such certified funds. A check:

9 (1) Drawn on an escrow account of a licensed real estate
10 broker, as regulated and described in section 339.105, RSMo;

11 (2) Drawn on an escrow account of a title insurer or title
12 insurance agency licensed to do business in Missouri;

13 (3) Drawn on an agency of the United States of America,
14 the state of Missouri or any county or municipality of the state of
15 Missouri; or

16 (4) Drawn on an account by a financial institution;
17 shall be exempt from the provisions of this section.

18 2. No title insurer, title insurance agency or title insurance
19 agent, as defined in section 381.031, shall make any payment,
20 disbursement or withdrawal in excess of ten thousand dollars from
21 an escrow account which it maintains as a depository of funds
22 received from the public for the settlement of real estate
23 transactions unless a corresponding deposit of funds was made to
24 the escrow account for the benefit of the payee or payees:

25 (1) At least ten days prior to such payment, disbursement
26 or withdrawal;

27 (2) Which consisted of certified funds; or

28 (3) Consisted of a check made exempt from this section by

29 the provisions of subsection 1 of this section.

30 3. If the director finds that a settlement agent, title insurer,
31 title insurance agency or title insurance agent has violated any
32 provisions of this section, the director may assess a fine of not more
33 than two thousand dollars for each violation, plus the costs of the
34 investigation. Each separate transaction where certified funds are
35 required shall constitute a separate violation. In determining a
36 fine, the director shall consider the extent to which the violation
37 was a knowing and willful violation, the corrective action taken by
38 the settlement agent to ensure that the violation will not be
39 repeated, and the record of the settlement agent in complying with
40 the provisions of this section.]

[381.412. 1. A settlement agent who accepts funds of more
2 than ten thousand dollars for closing a sale of an interest in real
3 estate shall require a buyer, seller or lender who is not a financial
4 institution to convey such funds to the settlement agent as certified
5 funds. A check:

6 (1) Drawn on an escrow account of a licensed real estate
7 broker, as regulated and described in section 339.105, RSMo;

8 (2) Drawn on an escrow account of a title insurer or title
9 insurance agency licensed to do business in Missouri;

10 (3) Drawn on an agency of the United States of America,
11 the state of Missouri or any county or municipality of the state of
12 Missouri; or

13 (4) Drawn on an account by a financial institution;
14 shall be exempt from the provisions of this section.

15 2. No title insurer, title insurance agency or title insurance
16 agent, as defined in section 381.009, shall make any payment,
17 disbursement or withdrawal in excess of ten thousand dollars from
18 an escrow account which it maintains as a depository of funds
19 received from the public for the settlement of real estate
20 transactions unless a corresponding deposit of funds was made to
21 the escrow account for the benefit of the payee or payees:

22 (1) At least ten days prior to such payment, disbursement
23 or withdrawal;

24 (2) Which consisted of certified funds; or

25 (3) Consisted of a check made exempt from this section by
26 the provisions of subsection 1 of this section.

27 3. If the director finds that a settlement agent, title insurer,
28 title insurance agency or title insurance agent has violated any
29 provisions of this section, the director may assess a fine of not more
30 than two thousand dollars for each violation, plus the costs of the
31 investigation. Each separate transaction where certified funds are
32 required shall constitute a separate violation. In determining a
33 fine, the director shall consider the extent to which the violation
34 was a knowing and willful violation, the corrective action taken by
35 the settlement agent to ensure that the violation will not be
36 repeated, and the record of the settlement agent in complying with
37 the provisions of this section.]

 Section B. The repeal of sections 381.011, 381.021, 381.031, 381.035,
2 381.041, 381.051, 381.061, 381.071, 381.078, 381.081, 381.088, 381.091, 381.092,
3 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.121, 381.125,
4 381.131, 381.141, 381.151, 381.161, 381.181, 381.191, 381.201, 381.211, 381.221,
5 381.231, 381.241, section 381.410 as enacted by conference committee substitute
6 for senate bill no. 664, eighty-eighth general assembly, second regular session,
7 and section 381.412 as enacted by house committee substitute for senate bill no.
8 148, eighty-ninth general assembly, first regular session, and sections 381.410
9 and 381.412 as enacted by conference committee substitute for house substitute
10 for house committee substitute for senate committee substitute for senate bill no.
11 894, ninetieth general assembly, second regular session, the repeal and
12 reenactment of sections 381.003, 381.009, 381.015, 381.018, 381.022, 381.025,
13 381.028, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062,
14 381.065, 381.068, 381.072, 381.075, 381.085, 381.112, 381.115, 381.118, 381.122,
15 381.410, and 381.412, and the enactment of sections 381.005, 381.008, 381.019,
16 381.023, 381.024, 381.026, 381.029, 381.033, 381.034, 381.076, and 381.113 shall
17 become effective January 1, 2007.

 Section C. The repeal of section 381.171 shall become effective July 1,
2 2007. The enactment of section 381.032 shall become effective July 1, 2007.

✓